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ABSTRACT

An estimated 13 million acres of New York State have been taken out of production agriculture since the early 1900s. While most of this land has remained idle and returned to its natural growth, that part that is being rapidly converted to urban uses is of immediate concern. These changes inevitably affect the quality of life in rural areas, impacting family lives, community service, and education. Urban development often absorbs prime agricultural lands in disproportionate amounts. It has an additional, indirect impact on farming, as an uncertain farming environment causes farmers to forego major improvements or investments. The conference reported in this document explored the various options available to preserve some of that prime agricultural land in New York State. Speakers described specific preservation programs operating in Connecticut, Florida, Maryland, Massachusetts, New Jersey, Oregon, Pennsylvania, Vermont, and Wisconsin. Preservation strategies include creation of agricultural districts, agricultural use-value assessment, zoning, purchase and transfer of development rights, and the setting up of land trusts. The appendices include a follow-up questionnaire sent to conference participants, survey results, and an outline of farmland preservation efforts in other states. (SV)

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Our Disappearing Farmland

Proceedings of the Farmland Preservation Conference

Bouck Hall, SUNY Cobleskill
Cobleskill, New York
July 28, 1988

Co-Sponsored by the:

New York State Legislative Commission on Dairy Industry Development
Senator John M. McHugh, Chairman

New York State Legislative Commission on Rural Resources
Senator Charles D. Cook, Chairman

New York Farm Bureau
Charles Wille, President

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INTRODUCTION

It is a sign of the times. No matter where you look in New York State, you will see fewer farms today than ever before. At the turn of the century, agriculture was the predominant land use in New York State as nearly 22.6 millio acres, approximately 74 percent, of the state's land base was being actively farmed. According to the New York State Department of Agriculture's most recent 1987 statistics, the percentage of total cropland remaining in the state has fallen to under 5.4 million acres or approximately 17 percent of the state's total acreage. This rapid movement of land out of production agriculture has been caused, in large part, by several structural changes that have occurred within agriculture. Advances in agricultural technology and productivity, combined with a shift in the supply/demand relationship, have led to the substantial withdrawal of land from farm use. Farm numbers have followed a similar downward trend over the past 50 years. The decline has been even more dramatic, however, as smaller farms have given way to larger farm operations.

Although a vast amount of land has exited production agriculture over the years, the reasons and the alternative uses of the land vary from region to region around the state. An estimated 13 million acres have been released from agriculture in New York State since the early 1900's. Only a small percentage of that land, however, has been converted to some form of residential, industrial, commercial, or transportation use. The majority of this land has remained idle and has reverted to its natural growth. Presently, roughly 55 percent of the land in New York is considered forest land. It is, however, the productive cropland that is rapidly being converted to urban uses which is of imminent concern. The problem is that as cities grow and people move out into the suburbs and the more rural surrounding areas, farmland is jeopardized. Development often absorbs agricultural lands in disproportionate amounts because typically, land best suited for agriculture near urban areas is often best suited for development in terms of its physical and topographical features.

Although direct land conversion is the most obvious sign of urban pressure on farmland, it often understates the full impact on New York agriculture. These side effects of urban growth tend to create a shaky and somewhat uncertain farming environment sometimes referred to as the "impermanence syndrome." Because of this uncertainty in many areas over the future of their farms, many farmers either postpone or completely forgo making any major improvements or investments in their businesses.

In response to the growing concern over this rising loss of productive farmland in New York State, a conference entitled "Our Disappearing Farmland" was held on July 28, 1988 at the State University of New York's Cobleskill Campus. The conference was co-sponsored by the New York State Farm Bureau Farmland Planning and Preservation Committee, the New York State Legislative Commission on Dairy Industry Development, and the New York State Legislative Commission on Rural Resources. It was an effort to explore the various options available to preserve some of New York State's prime agricultural land.

The conference speakers were selected on the basis of their hands-on experience and knowledge of a specific area of farmland preservation. Each speaker provided a candid assessment of the strengths and weaknesses of his specific preservation program. A variety of farmland preservation options were discussed including agricultural districts, agricultural use value assessment, zoning, purchase and transfer of development rights, and the use of land trusts. This document includes edited versions of each speaker's conference presentation. Each presentation was edited based on a written transcript of the conference proceedings and/or an original paper submitted by the speaker.

As a follow-up to the conference, a questionnaire concerning farmland preservation programs was sent to all participants, county planners, and Farm Bureau County Presidents. A copy of this survey, along with the results, is included in Appendix A. Appendixes B through I include resource papers that describe established farmland preservation programs that are successfully operating in other states.

We must be prepared to move ahead and develop a strong, workable policy in New York State that addresses the issue of farmland preservation and the ability to continue farming as a profitable industry in the state. This Farmland Preservation Conference laid the necessary groundwork and provided a starting point from which to build practical, workable farmland preservation programs to protect the future of New York's number one industry - agriculture.

OPENING REMARKS
FRED AMBERG[1]

This conference is not designed to tell us exactly what to do, or even to give us any or all the answers. What we will get is a lot of facts, information, supposition, suggestions, and ideas. What we hope to get are some more precise ideas and suggestions which the Farm Bureau policy development process can, with the help of the county Farm Bureaus and delegates at the annual meeting, turn into workable Farm Bureau policy. This policy can then be turned into legislative bills if necessary.

Yes, we do have a problem with disappearing farmland. However, if we do not watch out, the cure could be worse than the disease. The problems lie not only in the actual loss of productive farmland to building lots, but also in problems associated with normal farming practices. When newcomers to agricultural areas complain about the odor, noise, dust, and application of pesticides, these complaints can, and in some cases already do, stop neighboring farmers from using their land to its best advantage. This problem often can affect an area 10 to 20 times larger than the actual building lot. Problems will also occur when residents try, under the guise of farmland preservation, to preserve their privacy, or their view of the lake through extremely restrictive zoning or other measures of society.

Another problem lies in the development of large housing tracts within the suburban belt around cities. Here, too, farmers are being driven out by the same complaints that I previously mentioned. Residents would like to keep their surrounding area free of housing and, under the guise of farmland preservation laws, for example, the purchase of development rights are being suggested. In view of the fact that the normal farming operation in most cases will not be able to survive under these conditions for more than 10 or 20 years, is this actually farmland preservation or should it be handled under a different program?

The reason for asking you to come here is not to either approve or reject the suggested ideas out of hand. You are here to listen, to pick the suggestions and solutions apart and to try to put together the best of all of them. We as farmers have to remember that even if an idea sounds good to us right now and might even put some cash into our pockets, it may be devastating to our children and grandchildren 30, 50, or even 75 years from now.

If New York State and its citizens and legislators truly want to preserve the farmland, then they will have to give the owners of such land the opportunity to use it to the best advantage. With this in mind, I am asking you to listen carefully and consider all of the options, especially your own ideas. Definitely make your views known to the New York Farm Bureau Farm Land Preservation Committee, your own county Policy Development Committee, and naturally, your legislator.

We plan to follow up on this conference by mailing short questionnaires to all of you who are here. Please use them in some way, whether you answer the questions or answer in your own words, to let us know your views on this matter. We desperately need the input from the Farm Bureau members in this audience.

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[1]Mr. Amberg is Chairman of New York Farm Bureau's Farmland Planning and Preservation Committee.

I know that many of you here are not Farm Bureau members. You are from town, city, and county planning boards, ASCS offices, and other such agencies. We want to have your input too, and I am glad that you were able to come. I believe that this is probably the first time that you and Farm Bureau, or the farmers, have come together to look at this problem rather than standing on opposite sides. If you have some ideas, talk them over with us or with your county Farm Bureaus before you enact them.

Again, I want to thank you for coming and sitting here on such a nice day when the work is waiting at home. I know, mine is too. With this I am going to turn the microphone over to Jerry Adams, a dairy farmer from Dexter, New York and a member of the Farm Land Preservation Committee.

FARMLAND USE IN AN URBAN ENVIRONMENT: STATUS, TRENDS, AND POLICY ISSUES

NELSON L. BILLS[1]

New York's land resources have always been important to the production of agricultural commodities. Today, farmers own or lease more than nine million of the state's 30.6 million acres; this land is used to produce feed for the nation's third largest dairy herd and to produce field, fruit, and vine crops valued in excess of $2.5 billion each year (New York State Agricultural Statistics). Farm businesses also support industries that process raw farm commodities and they supply necessary inputs for commercial farm production.

Since early settlement, developments in the nonfarm sector of the state and national economies have greatly affected the use of New York land for agricultural purposes. In more recent years, these developments and their influence on New York agriculture have become a focal point for public policy. Numerous programs have been undertaken to promote the wise management of farmland resources. For example, New York is nationally recognized for its efforts to protect agricultural lands and promote a viable farm sector through the formation of agricultural districts. Efforts to implement and refine such programs, however, have stemmed from specific social, political, economic, and environmental considerations. These considerations change over time and necessitate continual review and debate over appropriate public policy initiatives.

The purpose of this paper is to facilitate such discussions by highlighting trends in the utilization of land for farming purposes in New York. I will also identify some of the issues which surround the continuance of agriculture in urbanizing situations. Available evidence on conversion of farmland to urban uses is also summarized and interpreted. The concluding section deals with the implications of these trends and issues for public policy on farmland resources.

Trends in Agriculture and Rural Land Use[2]

New York is one of the nation's most populous states and, by conventional measures, is among the most urban as well. Yet, only about 2.7 million acres, less than 10 percent of the state's 30.6 million acre land base, are built-up to accommodate residential, commercial, industrial, and transportation uses (figure 1). A majority of the land area (55 percent) is now classified as forestland. This acreage includes parks and forest preserves, as well as a substantial land area which has reverted to natural cover after it was released from crop or pasture use. Farm operators now produce crops on 20 percent of all land and use 13 percent for livestock pasture.

Current patterns of land use mirror the influence of several pervasive social, economic, and demographic forces dating back to the turn of the century. In 1900, roughly 70 percent of the state's population was classified as urban

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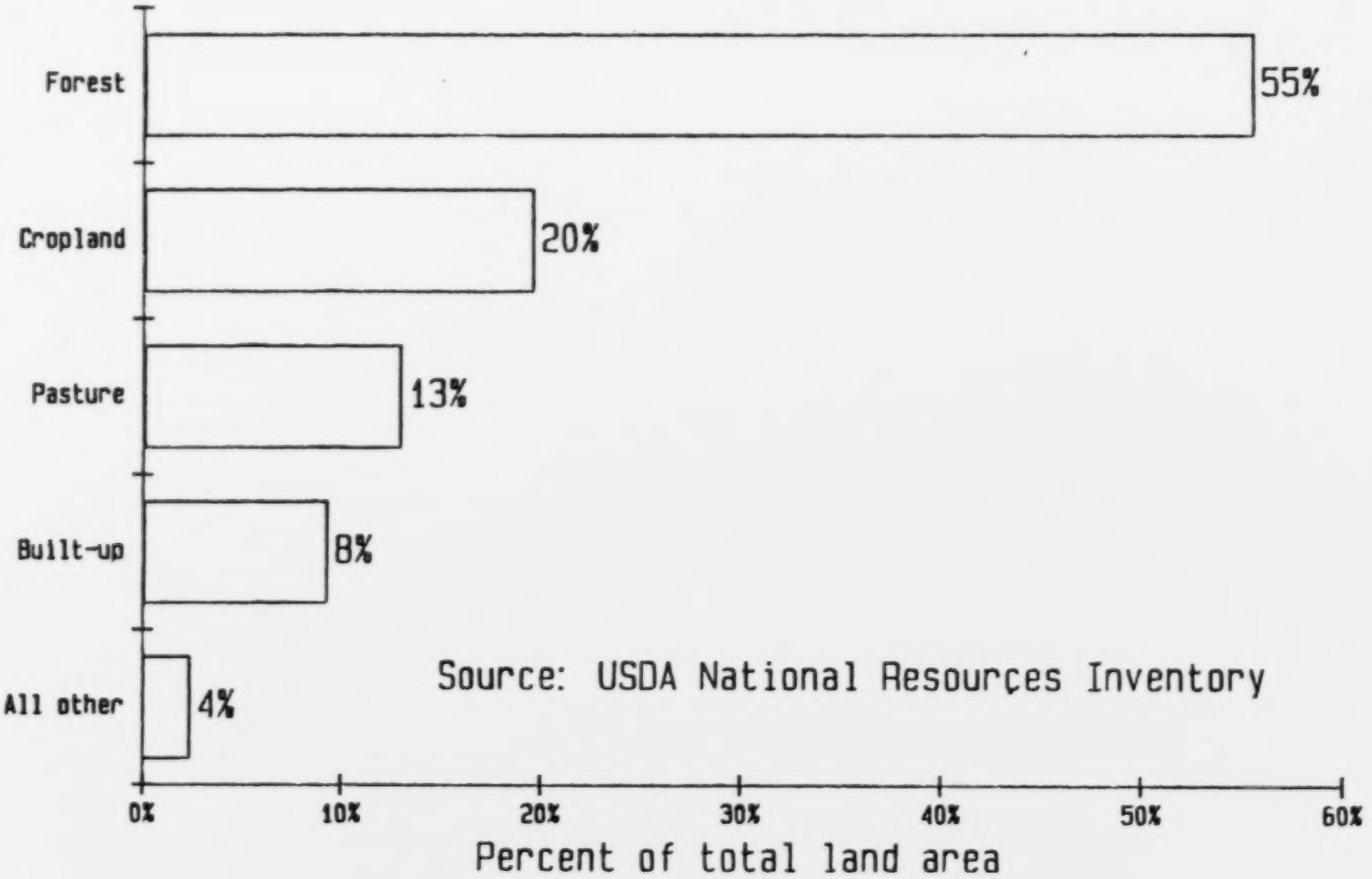
[1]Mr. Bills is an associate professor in the Department of Agricultural Economics, Cornell University. Richard Boisvert and Bernard Stanton made helpful comments on an earlier draft.

[2]This section is based on New York Agriculture 2000 (Boisvert and Bills).

Figure 1: Major uses of land in New York, 1982



because they resided in incorporated places with a population of 2,500 or more. The remainder were counted as rural and resided in open country -- on farms for the most part -- or in small villages or hamlets. Immigration, along with movement from rural areas to expanding job opportunities in urban, commercial, and industrial sectors, wholly confined net population growth between 1900 and 1920 to urban areas, while rural New York lost population (figure 2).

In contrast, rural New York has shared in the state's population growth since the 1920's. Although overshadowed in absolute numbers by population increases in larger urban places, well over one million new residents were added to rural areas between 1920 and 1950. After World War II, New York and other states in the Northeast led the nation in the population explosion in areas adjacent to large central cities. These population concentrations (now commonly known as suburbia or the urban fringe) occurred on land once rural, but now converted to use for urban-related residential, commercial, or industrial purposes. In 1950, about five percent of New York's total population resided on the urban fringe. The recent 1980 Population Census counted nearly 5.5 million New Yorkers (about 31 percent) on the urban fringe. (United States Department of Commerce, 1982).

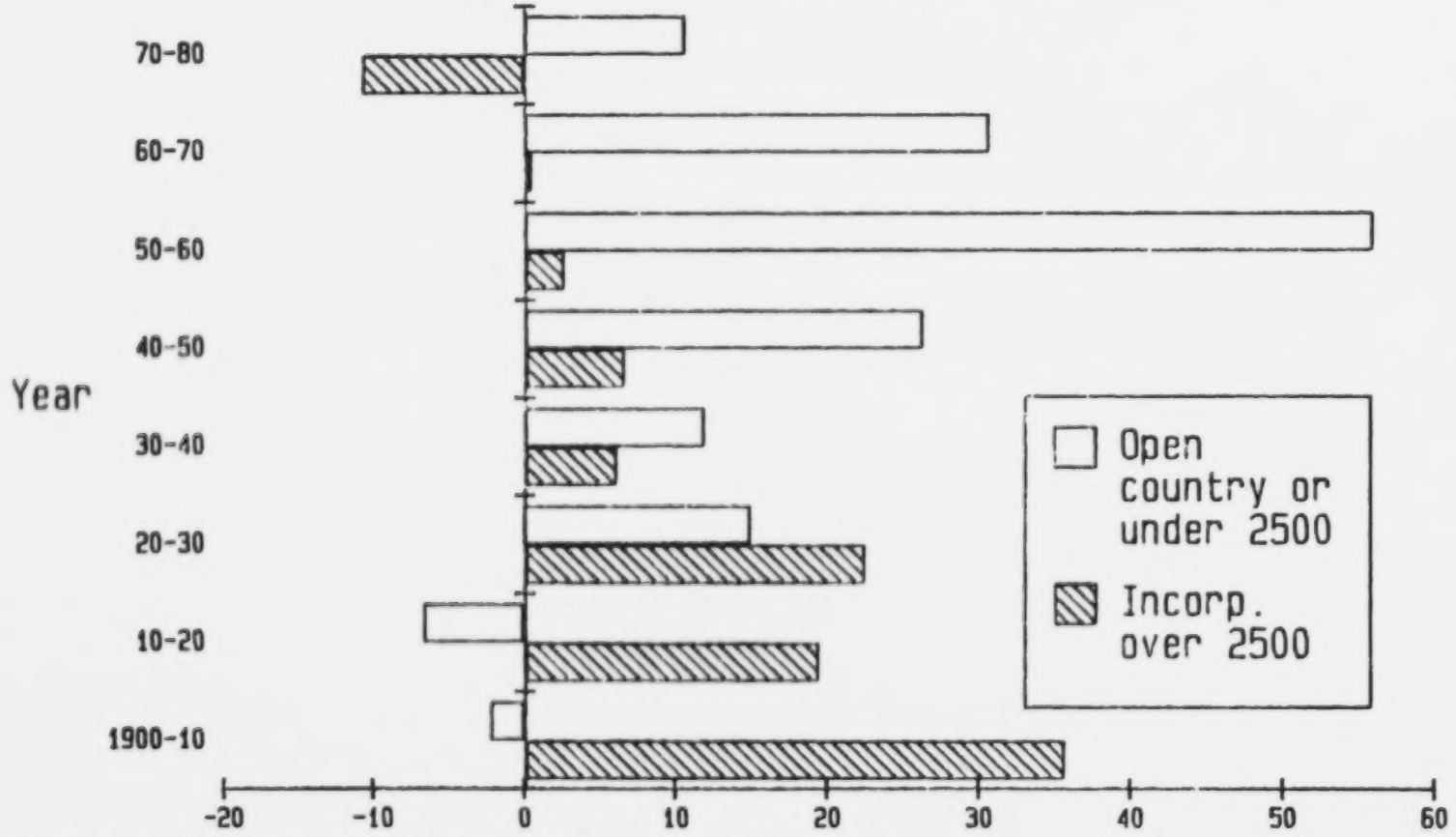
Since 1950, the Census has increased the land area classified as urban to account for new population concentrations on the urban fringe but outside the boundaries of incorporated cities and villages. The citizens found there are counted as urban. Such data accurately reflect the dynamics of population growth but tend to mask changes that are of special importance to rural land use policy. By recombining Census data for 1950-80 to generate an accounting of population change inside and outside incorporated places with populations of 2,500 or more (as in figure 2), we can show that open country and small hamlets have experienced population growth. On a percentage basis, this growth has been more rapid than elsewhere in the state since 1930. In fact, since 1960, net population growth has been confined almost exclusively to these "rural" areas.

Along with population growth, rural New York has also been reshaped by structural change in agriculture, especially over the last 50 years. Advances in agricultural productivity, combined with altered supply/demand relationships in the larger agricultural economy, have led to substantial withdrawals of land from farm use, declining farm numbers, and the formation of larger, more specialized farm production units. At the turn of the century, agriculture was the predominant land use in New York, with 74 percent (almost 22.6 million acres) of the land area being actively farmed in 1910. The most recent Agricultural Census reported just over nine million acres of land in farms (figure 3). Withdrawals of land from farm use were especially abrupt after World War II but stabilized in the 1970's when production responded to increases in farm commodity prices.

Farm numbers have followed a similar trend over the past 50 years (figure 4), but the decline has been even more dramatic. This reflects the consolidation of small farms into larger and more efficient units. Average farm size stayed relatively unchanged through nearly the first half of the century, but increased rapidly after World War II (growing from 118 acres in 1945 to 214 acres in 1974). There has been little change in farm size over the past decade.

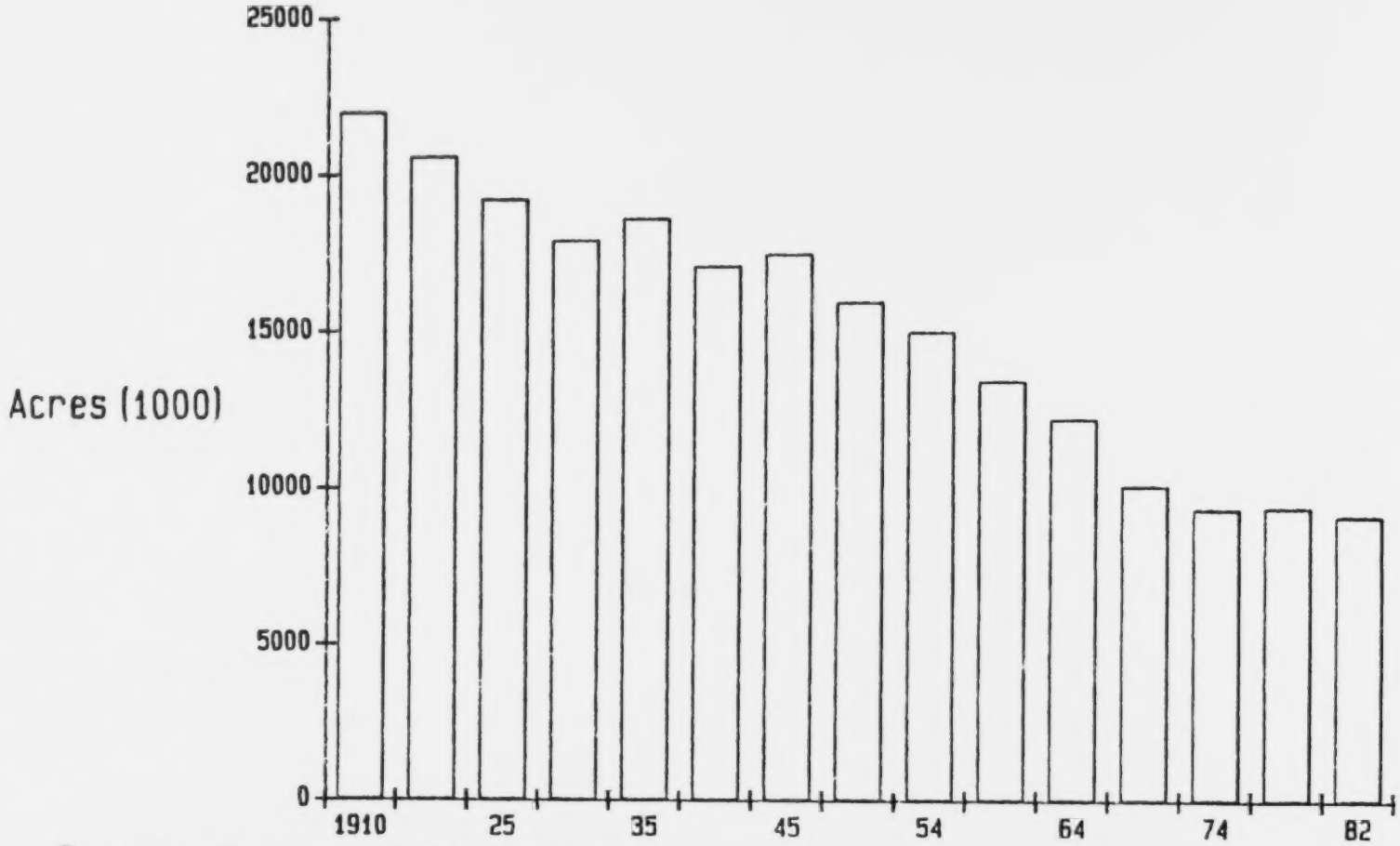
Rapid productivity increases and farm consolidation have helped keep New York producers competitive in regional, national, and international markets. Today, businesses engaged in the production of food, feed, and other farm commodities in New York generate total cash receipts approaching $3 billion. After adjusting for commodity price differentials to convert to constant 1967 dollars, this represents about $1.8 billion, a substantial 59 percent increase in the real value of farm production since the 1950's (figure 5). In contrast, the

Figure 2: Rate of population change in open country and incorporated places over 2500 population for New York, 1910-1980



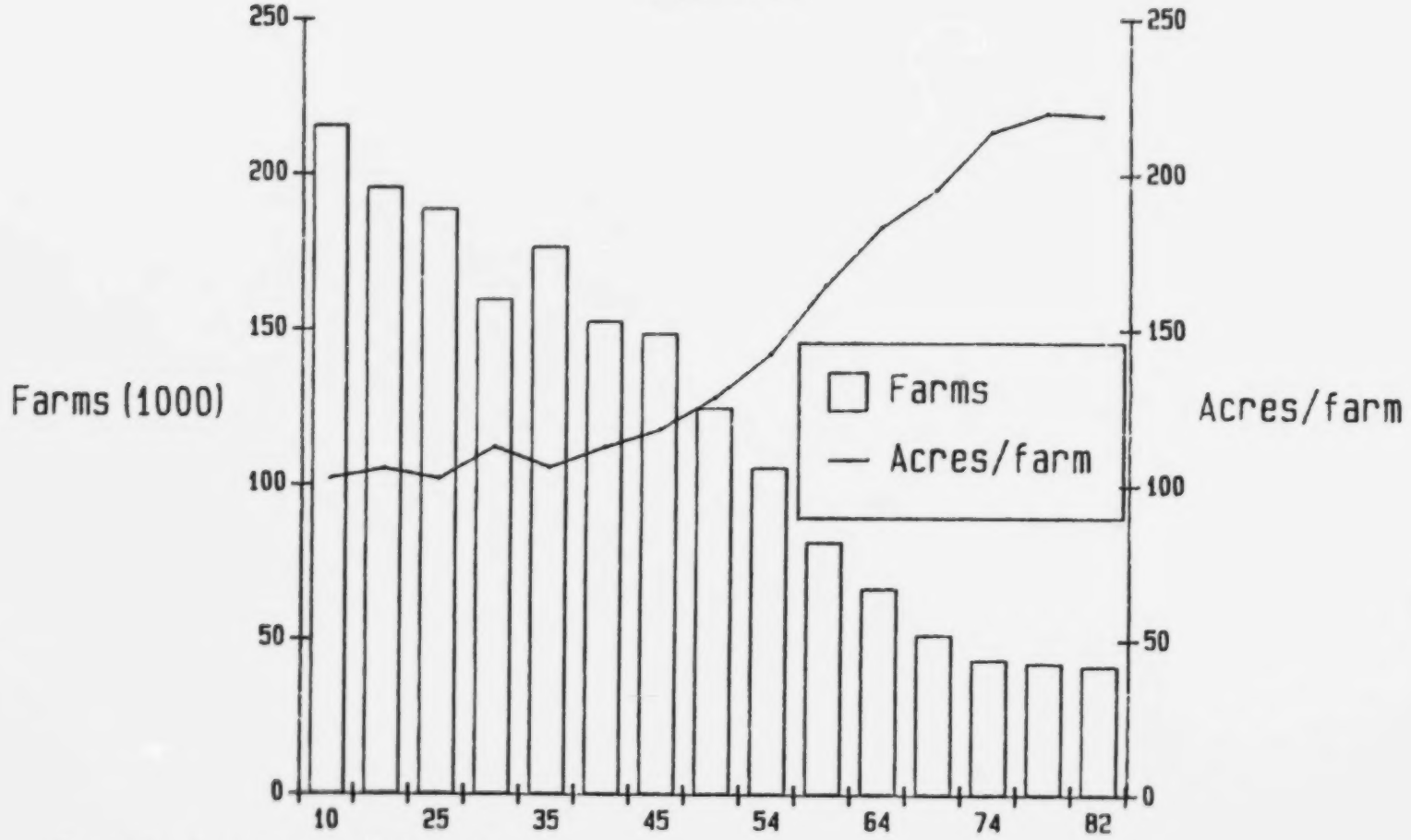
Source: Census of Population

Figure 3. Land in farms for New York, 1910-1982



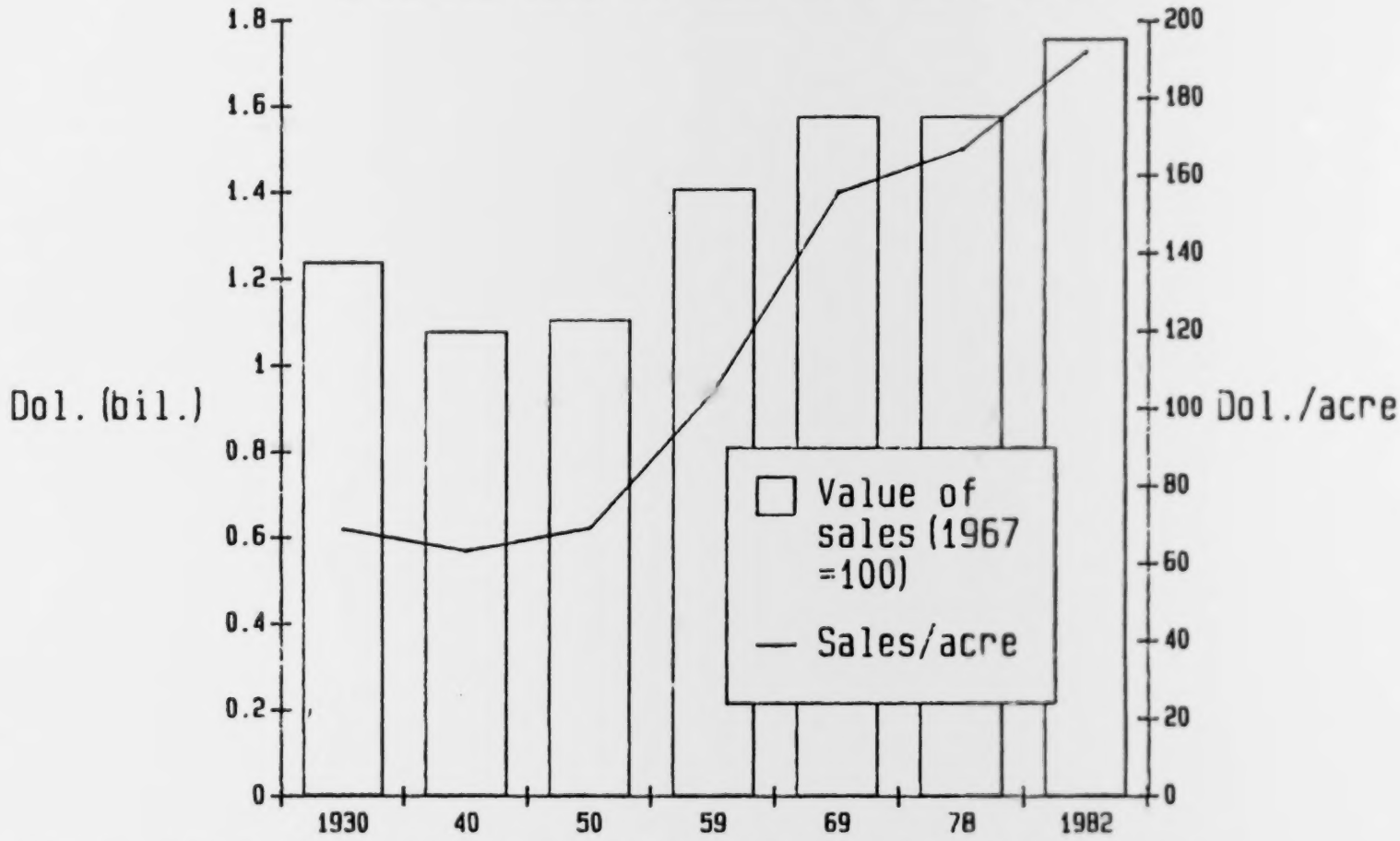
Source: Census of Agriculture

Figure 4. Farms and average farm size for New York, 1910-1982



Source: Census of Agriculture

Figure 5: Real value (1967=100) of farm products sold for New York, 1930-1982



Source: Census of Agriculture and Index of Prices Received by Farmers

annual value of output on New York farms, in constant dollar terms, ranged in the vicinity of $1.1 to $1.2 billion in the 1930's and 1940's. On a per acre basis, the real value of farm production (1967 dollars) has increased from $69 to $191 over the past 30 years.

Urban Land Conversion

The broad trends mentioned above help illustrate the interplay between rural land use, population growth, and economic development in the wider New York economy. By some measures -- such as land in farms or farm numbers -- one might infer that population growth and nonfarm development have largely come at the expense of the New York farm sector. Continual increases in the volume of agricultural production and even more striking gains in the productivity of land remaining in farm use, on the other hand, provide important evidence to the contrary. We do know that farm operators have achieved these production increases while utilizing far less land and labor inputs. Conversely, farm businesses are now far more dependent upon a wide variety of purchased items -- such as machinery, land improvements, seed, fertilizer, fuel, electricity, and chemicals.

Throughout this transition in the structure of the farm sector, nearly 13 million acres (over 40 percent of New York's total land area) have been released from agricultural use. Only a fraction of this land, however, has been converted to a built-up use. The overwhelming majority of these resources has remained idle and, over time, has reverted to natural cover. In the aggregate, a return to forestland has been New York's "fast growth" land use since the early 1900's.

Regardless of this general trend, conversion of farmland to residential, commercial, industrial, or transportation uses has a direct bearing upon public policy for agricultural land. Too often, land well suited for crop production has the physical and topographical features which also make it well suited for conversion to a residential, commercial, industrial, or transportation use. Possibilities for farmland conversion are also enhanced by patterns of land settlement. In New York, as well as in many other parts of the nation, settlement tended to occur in close proximity to land which could be turned to a productive agricultural use. Urban growth since the turn of the century has largely reinforced this settlement pattern. Today, some of New York's most productive farmland is situated near metropolitan centers; this land is directly in the path of major road transportation corridors and residential, commercial, and industrial development. In contrast, New York has much land which is isolated from urban development but which is far less productive in an agricultural use.

These relationships between patterns of agricultural land use and urban development are generally supported by empirical studies which estimate per capita land use changes. From a comparison of air photos available for 1951 and 1966 in 78 sample towns in Upstate New York, Allee et al. concluded that each additional resident involved the conversion of 0.19 acres to an urban use. Of this amount, 0.08 acres per person, or 42 percent, came from land which was formerly used for crops. In contrast, active cropland was the original use of 29 percent of the total land area in the sample towns. Another 0.1 acres came from "open land;" one cannot be certain, but some of this land could have been cropland recently idled in anticipation of conversion to an urban use.

The Allee study is now out of date, but the empirical relationships found in that analysis are generally supported by more recent studies by the USDA's Economic Research Service. An analysis of land use changes between 1960 and 1970 in selected "fast growth" counties in the Northeastern states showed that cropland contributed a disproportionately large share of acreage converted to urban uses. This relationship was attributed to the fact that cropland often has features --

such as moderate slope, good drainage, and limited waste area -- which make it especially amenable to urban development (Zeimetz et al.). A more recent USDA study, based on 1970-80 photography for fast growth counties, estimates that urban land consumption -- the amount of open land converted to a developed use -- for the Northeastern states amounted to 0.22 acres per person; 60 percent (.13 acres) on average had been used for crops, pasture, or some other agricultural purpose (Vesterby and Brooks).

Unfortunately, the studies mentioned above do not provide up-to-date estimates which can be tailored to local situations in New York. We could benefit from more research on this theme. However, the available evidence does allow some crude calculations of the amount of New York cropland converted to urban uses in the recent past. The calculations can then be compared to the total amount of cropland released from farm use.

The point of departure is an estimate of population increases in New York. The state incurred a net population loss of 3.8 percent between 1970 and 1980 and, according to Census estimates, a very modest one percent increase over the 1980-84 period. Net population losses over the entire 1970-84 period, however, have been confined to 87 minor civil divisions -- the five boroughs of New York City, 61 incorporated cities, and 21 towns which can be defined as wholly urban. The remaining 910 minor civil divisions in New York realized a net 1970-84 population increase of about 706,000 (Hirschl, Brown, and Lyson). If per capita cropland conversion falls in the range of 0.8-0.13 acres per person, as the evidence implies, population growth between 1970 and 1984 may have displaced between 56,500 and 92,000 acres of cropland. On an average annual basis, this suggests that direct cropland decreases attributable to urban conversion fall in the range of 4,000 to 6,500 acres per year. In comparison, New York's total cropland base decreased from 6.3 to 5.9 million acres, an average annual decrease of 31,300 acres per year, between 1962 and 1982 (Frey, 1973; Frey and Hexem, 1985). Thus, direct conversion to built-up uses may have accounted for 13 to 20 percent of the decrease in the state's cropland base since the early 1970's.

The Side Effects of Urban Growth

Most observers agree that direct land conversion, while the clearest manifestation of urban pressure on farming, understates the impact of growth and development on New York agriculture. Urban expansion often wields more subtle impacts on the maintenance of a viable farm sector. These impacts are thought to be of considerable importance because they encourage good farmland to be withdrawn from or underutilized for farming many years before it is needed for a residential, commercial, industrial, or transportation use.

Uncertainty

Farm operators are also investors. They own several million acres of farm real estate and continually weigh decisions on capital expenditures for land and building improvements. Like all other investors, farmers are not immune to the speculation that can build up around the timing and location of new urban-related development in their communities. Investments in the farm business may be postponed or forgone completely if farmers develop high expectations for future conversion of their land to residential, commercial, or industrial use. Postponing or forgoing investments in such land improvements as silos, barns, fences, or drainage works can be entirely rational if a farmer plans to discontinue his business before the improvements are fully depreciated. These investments often add no value to the real estate if the land is converted to a nonfarm use. Conversely, investments of this kind, especially when livestock

production is involved, are essential if farm businesses are to remain competitive in regional and national commodity markets.

An uncertain environment for farming, sometimes referred to as the "impermanence syndrome," was central in the deliberations that led to New York's agricultural district law. Studies conducted in the 1960's indicated that speculation over nonfarm growth disrupts farming in belts of urban influence around New York's central cities. For example, Conklin and Dymsza analyzed farming patterns near Rochester and Syracuse and found an increasing frequency of large investments in land improvements as distance to the city increased. The Conklin and Dymsza study also showed that localities within the state differ substantially in their capacity to adjust enterprises and maintain high levels of farm production in the face of urban expansion. Dairy farms require relatively large investments in land improvements, and some dairy farmers were situated on land which appeared to be suited to alternative cash crops instead of dairy crop production. Analysis of enterprise adjustments over the 1959-69 period, however, suggested that farm operators near Rochester produced more high-valued cash crops and were more likely to be successful in a metropolitan area when compared to farm operators near Syracuse. The authors concluded that the Rochester-Syracuse differences stemmed from competitive advantages due to climate, soils, topography, and greater availability of irrigation water. They also argued that natural cropland advantages near Rochester were reinforced by an accumulation of management skills and infrastructure required to sustain the production of higher-valued fresh market crops.

Critical Mass

Farm businesses depend upon some very specialized services such as machinery, machinery parts and repairs, fertilizers, pesticides, and processing outlets for raw farm products. These services are provided by agribusiness firms. Farming in any single locality must occur on a scale that allows these support firms to generate enough business to service their farm clients at a reasonable cost. Otherwise, the services will disappear locally and farm operators are confronted with the time and expense of securing needed services at a greater distance.

Discontinuities in Land Use

Farming in urbanizing situations is carried out in close proximity to other land uses. Farm businesses can be adversely affected by immediate contact with land devoted to residential, commercial, or industrial uses. Farming operations required to produce crops and livestock seem to be routine to farm operators but they may aggravate otherwise well-intended nonfarm neighbors. For example, nearly one-third of the farm operators contacted in a study near Buffalo indicated that residential development was a disturbing influence on farm businesses. This was due to complaints about farm odors, noise, and the presence of mud and manure on roads (Hexem, Bills, and Ball).

Development in the vicinity of active farming can also increase the frequency of problems associated with trespass; farm machinery, livestock, crops, and farm buildings can often be tempting targets for vandalism. Development inevitably is accompanied by increased traffic congestion on local roads and highways. This, in turn, increases the hazards involved in moving farm machinery to conduct field operations.

Property Tax Liabilities

Property tax levies are the most important source of revenue for local governments in New York. Increased expenditures by these units of local government have generated increasingly large tax liabilities for agriculture. Unlike other industrial sectors, farm operators have few, if any, opportunities to shift higher property tax bills forward to consumers through higher prices for raw farm commodities, or backwards through more favorable prices for production inputs.

Tax increases on farm real estate can be particularly abrupt in localities influenced by urban growth and development. Assessments on open land in these situations can be increased to reflect its value in a developed use. Tax rates can also increase as local elected officials strive to obtain the revenues needed to fund expanding needs for public goods and services. Tax levies in these situations are sometimes thought to be large enough to induce direct conversion of farmland to a developed use or idle it prematurely while development opportunities continue to ripen.

Criticism of the property tax persists despite legislated efforts to reduce the tax burden on farm real estate. Currently, new farm improvements are exempted from tax levies for a ten-year period. In addition, New York's agricultural district law provides that qualified farmland owners can apply for an exemption on that part of the value of their land that is attributable to speculative or development purposes.

Landownership and Control

Throughout New York, farm consolidation and expansion in farm size have been accompanied by a decrease in the incidence of full ownership -- a situation where the farm operator owns all the land operated as a farm. Currently, about 55 percent of New York farmland is operated by part owners; one-fifth of all farmland is owned by individuals or corporations who do not operate a farm (U.S. Department of Commerce).

Although empirical evidence is limited, the pattern of farmland rental and the characteristics of nonfarm landlords appear to vary along a gradient of distance to New York's large central cities. For example, Bryant studied farm rental and sale markets in Wayne County (near Rochester) and found that the number of farm operators who depend on rented land is inversely related to distance to the central city. That study also implied that about 95 percent of all owners of rented farmland in Wayne County were either rural nonfarm residents or absentee owners.

Changes in the composition of landownership in urbanizing situations means that the commercial farmers who remain must gain access to increasing amount of land via land rental markets. They must negotiate these arrangements with landlords who often have limited familiarity with production agriculture and uncertain planning horizons for the use of their land.

Comments

Several conclusions follow from the previous discussion and provide some basis for debating new priorities for state-sponsored farmland protection initiatives. Rural population growth in New York has been a reality for many decades. There is little reason to believe that the influx of population into areas once rural will abate in the foreseeable future. Population growth and attendant employment expansion induces conversion of farmland to new, developed uses and can produce debilitating side-effects for the farm businesses that remain.

Yet, after more than 300 years of settlement, less than 10 percent of New York's land area is built-up to accommodate urban and transportation uses. In fact, urban development has accounted for only a small fraction of the land remaining in agricultural uses since the turn of the century. The bulk of the acreage released is obsolete for farming purposes and has reverted to natural cover after remaining idle for many years. It is now classified as forestland. Reduced agricultural land use has principally come in the wake of major structural adjustments in the New York farm sector. These structural adjustments have, for the most part, concentrated commercial farming on land which is best suited to crop production and most responsive to technological advances in a modern agriculture. Impressive increases in productivity have been realized for land remaining in farm use.

Looking to the future, it also seems clear that a fraction of the state's current farmland base is at risk because it is situated near corridors of urban expansion and is, due to its physical and topographical features, prone to future development. Research has consistently shown that development is tilted toward land devoted to a crop use.

It should also be emphasized that the vulnerability of good farmland to outright conversion is greatly affected by factors at work in the farm sector and in the wider economy. In general, the stage is set for such land use changes when the farm economy is plagued by low incomes and sluggish demand for raw farm commodities, and when the nonfarm economy is expanding. Predictions are dangerous, but much of the 1980 decade has been characterized by such conditions -- stagnant farm incomes and expansion in the nonfarm sector of the New York economy. These conditions tend to disadvantage policies and programs designed to encourage the maintenance of farmland in its current use.

Equally significant is the fact that the economic health of New York agriculture is largely determined by its competitive position in regional and national markets for farm commodities and by farm policies enacted by the United States Congress. These considerations are almost entirely beyond the scope of state and local programs and policies for rural land use. This means that such policies, regardless of the skill demonstrated in their design, do not necessarily secure the future of New York agriculture.

Conversely, the vitality of agriculture is dependent upon quick and ready access to high quality land resources. Programs and policies which facilitate these arrangements are to the advantage of all New York citizens. A challenge is to fashion effective policies for growth management -- programs which accommodate the state's very real needs for housing and economic development, without compromising prospects for a dynamic and competitive agriculture.

REFERENCES

Allee, David, et al. Toward the Year 1985: The Conversion of Land to Urban Use in New York State. Special Series Number 8, New York State College of Agriculture, Cornell University, Ithaca, New York. 1969.

Boisvert, Richard N. and Nelson L. Bills, "Farmland Protection in New York State." In Toward a Long-term Strategy for Farmland Protection and Soil and Water Conservation in New York, A New York Agriculture 2000 Report. Published for Mario M. Cuomo, Governor, New York State, Albany, New York. No date.

Bryant, William R. The Rural Land Market in Wayne County, New York. A.E. Res. 74-8, Department of Agricultural Economics, Cornell University, Ithaca, New York. August 1974.

Conklin, Howard E. and Richard Dymsza. Maintaining Viable Agriculture in Areas of Urban Expansion. New York State Office of Planning Services, Albany, New York. 1972.

Frey, H. Thomas. Major Uses of Land in the United States, Summary for 1969. Agricultural Economic Report No. 247, Economic Research Service, United States Department of Agriculture, Washington, D.C. December 1973.

Frey, H. Thomas and Roger W. Hexem. Major Uses of Land in the United States: 1982. Agricultural Economic Report Number 535, Economic Research Service, United States Department of Agriculture, Washington, D.C. June 1985.

Hexem, Roger W., Nelson L. Bills, and Sally Ball. Agricultural Districts and Land Use: A Pilot Study. A.E. Research 80-29, Department of Agricultural Economics, Cornell University, Ithaca, New York. November 1980.

Hirschl, Thomas A., Warren A. Brown, and Thomas A. Lyson. Rural New York in a Post-Urban Industrial Society. Department of Rural Sociology, Cornell University, Ithaca, New York. February 1988.

New York State Department of Agriculture and Markets, New York Agricultural Statistics Service. New York State Agricultural Statistics, 1986. Albany, New York. June 1987.

United States Department of Agriculture, Soil Conservation Service. National Resources Inventory. Washington, D.C. No date.

United States Department of Commerce, Bureau of the Census. 1982 Census of Agriculture: New York. Vol. 1, Pt. 32, U.S. Government Printing Office, Washington, D.C. 1983.

United States Department of Commerce, Bureau of the Census. 1980 Census of Population: New York. Vol 34, No. 1 (Number of Inhabitants), U.S. Government Printing Office, Washington, D.C. 1982.

Versterby, Marlow and Douglas H. Brooks. Land Use Change in Fast-Growth Areas, 1950-1980. Draft paper presented at the Economic Research Service and Farm Foundation's workshop on "Land Use Transition in Urbanizing Areas: Research and Information Needs." Washington, D.C. June 6-7, 1988.

Zeimetz, K.A., E. Dillon, E.E. Hardy, and R.C. Otte. Dynamics of Land Use in Fast Growth Areas. Agricultural Economic Report No. 325, Economic Research Service, United States Department of Agriculture, Washington, D.C. 1976.

INTRODUCTION TO FARMLAND PRESERVATION ISSUES: EXPLORATION OF EXISTING PROGRAMS AND ALTERNATIVE OPTIONS

KEN GARDNER[1]

I am going to begin by first presenting a conclusion. That conclusion is that we have to be prepared to take a quantum leap ahead in developing a policy in New York State that addresses the question of farmland protection and continuation of farming as a profitable industry in the state.

If you happened to go by the news stand yesterday morning, July 27, 1988, there was a cover story in USA Today relevant to this conference. The title was, "Where Urban Sprawl and Suburban Mesh." I think that you might be able to subtitle that "And Where Suburbs and Rural Areas Clash." The substance of the article deals with the development of megacities and, in computerase, I guess that would follow down to minicities and microcities. There is a continuation of movement into the rural areas as people strive to find their piece of the action in the countryside.

The symptoms of what we are talking about today are:

1) A highly mobile population - The USA Today article described a family that moved into a suburb between Washington and Baltimore a few years ago. Of the 14 families that lived on their block, nine have since moved away, so this highly mobile population is part of the problem;
2) A population that is highly motivated and career-oriented;
3) A dramatic change in lifestyle preferences in the way people want to live, work, and recreate; and
4) An insatiable desire to live in the country or to be away from the central city.

The interesting thing is that this morning, July 28, 1988, there was a follow-up story in the same paper on the amount of land that is being purchased by foreign investors. Some 12 to 15 million acres are now owned by foreign investors. They see land as a good investment in this country.

Background

In the early days of this nation, there were few attempts to regulate land use and land development. The primary means available to regulate undesirable or conflicting uses was common law nuisance.

The technological revolution which began to impact land development in the latter half of the nineteenth century continues today. A series of inventions changed the face of the countryside and sped up the rate at which rural land was converted to urban uses. Some of the inventions that impacted the land were railroads, automobiles, airplanes, high rise buildings, elevators, cheap electricity, and many others. Man achieved a new order of technological capability to harness nature and convert natural resources into useful commodities. Man also achieved a capacity to pollute the environment and to change the face of the earth. This was inconceivable a century before.

At the heart of the land use issues being discussed at this conference are public policy decisions which were made decades ago by the national government.

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Among these early policy decisions were the building of our interstate highway systems and the encouragement of residential and economic development. These were accomplished through low interest mortgage loans from the Farm and Home Administration and Veterans' Administration. This then made possible for people to work in one place, live in another, and recreate in still another.

The desire for urban residents to own a piece of land in the country is a continuing trend, as evidenced by the movement of city dwellers to suburban, semi-suburban, and rural areas. Overlay on this situation the national farmland policy in which we have cyclic swings of too much land in production, not enough land in production, too much land, etc. Overlay on top of this a policy to provide technical and financial assistance to rural communities for economic development. This often results in land use conflicts.

It is encouraging, however, that in the last few years there has been a bringing together of people from many different persuasions. This is partially due to such things as the new awareness of the importance of environmental quality which started back in the 1960's with the publication of Rachel Carson's Silent Spring, and later Earth Day. The continued involvement of these people is resulting in a coalition which is addressing some of the environmental issues that we must deal with.

POWERS OF GOVERNMENT

Let us take a look at some of the basic powers of government which impact land use.

The Power of Eminent Domain

This power of eminent domain made it possible for governmental bodies to take land with "just compensation" for a variety of public purposes including public buildings, roads, parks, and schools. Rights of way could be condemned by railroads and public utilities. While the application of this power was narrowly focused to achieve a very specific goal, the impact of its results were wide ranging. Blighted areas in central cities were condemned - some for redevelopment, others for the construction of parkways and park lands.

The Police Power

The police power provides government with the ability to regulate private activity to protect the health, safety, morals, and general welfare of the people. The first comprehensive zoning ordinance was adopted in New York City in 1916. Since then, zoning has become the most widely used method of regulating land use in the country. The ineffectiveness of zoning is the most frequent reason given for our land use problems.

The Power to Tax

Because of the dependence upon the real property tax as a major source of revenue, local governments have engaged in the practice of "fiscal zoning." Fiscal zoning is exemplified by over zoning for commercial and industrial uses which tend to produce high revenues and demand low service expenditures. Secondly, high service demanding uses are excluded by large lot zoning, limiting or excluding apartments, restricting mobile homes, and establishing high subdivision and building code regulations.

As early as 1968, the American Society of Planning Officials reported that there certainly are many improvements that can be made in our system for regulating land use. However, until we make substantial progress in rationalizing

tax and fiscal policy for local government, fiscal zoning will continue to plague all land-use regulations.

The Power to Spend

Local governments have a capacity to both directly and indirectly impact land uses through their power to spend. Decisions to build highways, install sewer and water facilities, or provide parks and other recreational facilities can dramatically influence land use patterns.

I now want to review some of the schemes that have been developed around the country to address the farmland protection question. We are not going to be able to talk about all of the exciting things that seem to be going on in the various parts of the country, but nevertheless I think a number of them are worth mentioning to see what they may offer us.

TOOLS TO PROTECT FARMLAND

Real Property Taxation

Prior to the mid-1950's, the central concept behind real property was that of ad valorem taxation. This concept assumed a uniformity standard. All property was to be assessed at a uniform proportion of property value. Most state constitutions required this standard.

Pressures on land diversified and increased after World War II. Various methods were sought to stop or slow the rapid conversion of farmland to non-farm development. Rapidly rising farmland prices increased the tax burden on land and encouraged land to be prematurely withdrawn from farming, especially on the urban-fringe.

A fundamental change in the real property tax system occurred as state governments universally adopted property tax relief programs for farmland. All states provided property tax relief through use value assessments. Through this eligible farmland was assessed on the basis of its value in farm use rather than on its market value. Maryland was the first state to enact such legislation in 1956.

Court challenges to use value assessments were initially upheld. The courts ruled that the laws violated the uniformity standard prescribed by state constitutions. States reacted by amending their constitutions to permit use value assessments.

Current use value assessment laws can be categorized in four ways:

1) Preferential assessments;
2) Deferred taxation;
3) Restrictive or contractual agreements; and
4) Land use or zoning approval.

States with preferential assessment laws include Arizona, Arkansas, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Dakota, West Virginia, and Wyoming.

A combination of preferential assessment with deferred taxation is used by Alabama, Alaska, Connecticut, Delaware, Georgia, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, and Washington.

California, Hawaii, Michigan, New Hampshire, New York, Pennsylvania, and Wisconsin use a preferential assessment with a restrictive agreement.

Preferential assessment plus zoning regulations are required by Oregon and Wisconsin.

The policy objectives of use value assessment programs may be subject to debate, but the commonly identified legislative goals are: 1) to discourage the conversion of farmland to urban uses by reducing or eliminating the property tax consequences of urban influences in farmland markets where assessments are based on market values, and 2) to achieve property tax equity by providing property tax relief to owners of farmland.

Programs adopted in the 1960's and early 1970's embraced the first policy goal, while more recent programs sought simply to improve property tax equity.

Research reviews suggest that use value programs have fallen short of the first objective. Other investigators have studied the costs of preferential farmland assessments by analyzing shifts of different classes of property and state and local government tax expenditures.

Use value assessments on farmland are one of many changes that have been made in the United States' property tax system to accommodate a particular group of taxpayers. These changes have moved the property tax away from the historical principals of a uniform ad valorem tax. While each of the "reforms" can be criticized, they have contributed to the continued acceptance of the property tax as a major source of local tax revenue used to finance local government services.

Despite shortcomings, farmland use value assessments present several administrative and policy advantages. First, use value assessments on farmland have improved the equity of the property tax in the eyes of an important political constituency - farmland owners. Second, these programs generally provide an objective foundation for farmland assessments by explicitly linking assessments to agricultural productivity (commonly measured by soil productivity). Generally, if administration is consistent across tax jurisdictions, higher quality farmland carries a higher assessment than lower quality farmland and similar lands receive similar use values. Third, once use values are established, setting assessments on individual farm parcels is relatively easy, especially if adequate soil information is available. Finally, use value assessment programs in the respective states have been effective vehicles for providing property tax relief to owners of farmland.

The administrative and policy advantages of farmland use value assessments suggest that they will remain important components of the real property tax system. As issues such as stability, accuracy, and vertical and horizontal equity are recognized, marginal policy changes will be needed to refine procedures and improve performances. However, a clear understanding of current practices and policies and the resulting system performance from state to state is critical if marginal changes are going to lead to improvements.

One distinguishing feature among states with use value assessment programs is whether the program is voluntary of universal. Twenty-four of 50 states with use value assessments on farmland have voluntary programs. Land and/or owners must meet eligibility criteria and applications are required for participation. New York, of course, has a voluntary program.

A characteristic unique to all states with voluntary programs is the imposition of rollback taxes or tax penalties when benefiting landowners convert their properties to non-farm uses. The practice of imposing rollback taxes or tax penalties for land use changes reflects the policy objective of encouraging farming activities through property tax incentives. A practical difficulty of tax recapture provisions is the requirement for application and certification increases the cost of administering the property tax system.

Twenty-three states have universal use value assessments that apply to all farm property. These are essentially tax abatement programs. Oregon and Hawaii mandate use value assessments for some farmland, while other farmland participates on a voluntary basis.

Several states, including Connecticut, New Hampshire, and Massachusetts, have enacted conveyance taxes on the sale of land which benefits from use value assessments. These measures generally provide for a tax which is inverse to the length of time a use value benefit was in force.

Vermont enacted a gains tax to deter short-term speculation on land. The tax is imposed on gains made from the sale of land. Its rates are inversely proportional to the length of time of the holding period, starting at less than one year and ending after six years, and is proportional to the percentage of profit. In Massachusetts, an owner of land classified as agricultural/historical land may not sell the land for or convert the land to residential, industrial, or commercial use while it is so classified unless the owner gives the city or town in which it is located notice of his intent to sell or convert. Subsequent to such notice, the city or town has 60 days to exercise a first refusal option to match a bona fide offer to purchase the land. In the case of an owner conversion, the city or town can exercise an option to purchase the property on the basis of full market value as determined by an impartial appraisal.

Agricultural Districts

Twelve states have enacted enabling legislation to create agricultural districts. The first program was passed in 1965 by California. Subsequently, New York (1971), Maryland and Virginia (1977), Illinois (1979), Minnesota (1980), Iowa and Pennsylvania (1981), Kentucky and Ohio (1982), New Jersey (1983), and North Carolina (1986) enacted their laws.

The total area enrolled in the agricultural districts program approximates 25.8 million acres with California and New York accounting for about 89 percent of the total acres in districts. The legislation from the various states spells out the process for district formation and the factors that need to be considered.

All states provide for use value assessments although the procedures vary. In California, county governments can elect to establish agricultural preserves or accept individual landowner applications. Few preserves have been established although 49 of the 58 counties of the state have elected to participate in the program. On the other hand, most of the applications are from individual landowners who accept reduced property taxes in return for entering into a contractual agreement to restrict the use of their land.

In New York eligible land within agricultural districts, or in individual eight-year commitments, can receive use value assessments by applying annually.

Other features of different state programs include:

1) State agency policies are modified in Illinois, Iowa, Kentucky, Minnesota, New York, Pennsylvania, and Virginia;
2) Local regulations are modified or limited in Illinois, Maryland, Minnesota, New Jersey, New York, Pennsylvania, and Virginia;
3) Eminent domain procedures are modified in California, Kentucky, Minnesota, New Jersey, New York, North Carolina, Ohio, Pennsylvania, and Virginia;
4) Development assessments are made in Illinois, Iowa, Minnesota, New York, North Carolina, Ohio, and Virginia;
5) Limitations are placed on annexation of farmland in Kentucky and Minnesota;
6) Nuisance claims are limited in Iowa, New Jersey, and Ohio; and
7) Agricultural districts enable the exercise of purchase of development rights in Maryland, New Jersey, and Pennsylvania.

Most of the states require an analysis of farmland quality and/or viability balanced against current land use and development needs when agricultural districts are formed. Two states, Illinois and North Carolina, require evidence of approved conservation plans for land included in agricultural districts. Ohio factors in gross farm receipts and in Maryland, critical mass of the farming sector is an important factor.

Agricultural Zoning

Zoning was first used in New York City after the passage of the first comprehensive zoning ordinance in 1916. The power of local governments to use this ordinance was affirmed by the United States Supreme Court in 1926, and today all 50 states have enacted zoning enabling legislation. Agricultural zoning is the most widely used method employed by local governments to maintain agricultural lands.

In recent years a number of innovative schemes have been put in place at both the state and local levels of government. These programs provide for agricultural zoning while at the same time, they avoid the "taking issue."

Hawaii, Michigan, Oregon, and Wisconsin all have implemented statewide agricultural zoning, while over 300 municipalities also have established agricultural zoning at the local level.

Terms such as sliding scale, short-platting, and agricultural district overlay describe the efforts of some local jurisdictions to provide means whereby agricultural lands can be retained and still avoid the taking issue.

Purchase of Development Rights

The first Purchase of Development Rights Program (PDR) was established in Suffolk County, New York in 1974. Development rights were defined by the county as, "being all of the property owner's right, title, and interest in the property except raw ownership, the right of possession, and the right to use the property for agriculture."

Twelve states, including Maine, New Hampshire, Rhode Island, Massachusetts, Connecticut, New York, New Jersey, West Virginia, North Carolina, and Washington have enacted legislation permitting state or local purchase of development rights. The most active states are all located in the Northeast and include Connecticut, Maryland, Massachusetts, New Jersey, and Rhode Island. The purchase of development rights occurred on 95,340 acres in those five states. Pennsylvania passed a $100 million bond referendum in 1987 to begin a PDR Program.

The stated goals of PDR programs vary, but they generally include the retention of prime farmland, assurance of orderly and balanced development, maintenance of good producing capacity for future generations, assurance of high quality local produce, local self sufficiency, and provisions for open space and other environmental immunities. Unstated goals may include issues such as subsidizing farmers or protecting owners of large lot developments from high density development.

PDR program's offer a degree of permanence that is not achieved by agricultural zoning, agricultural districts, use value assessments, etc. By removing only the development rights, the cost is less than fee simple purchase and the cost of maintenance is borne by private landowners. Further, the common methods used to value development rights include agricultural and full market appraisals and negotiated prices between landowners and the agency purchasing the development rights. This avoids the politically hazardous taking issue on the one hand, and eminent domain on the other.

Transferable Development Rights

Seven states have authorized Transferable Development Rights Programs (TDR). Florida, Maryland, New Jersey, New York, Vermont, Virginia, and Washington are the states that currently permit development rights to be transferred from sending to receiving areas. One of the major benefits cited for TDR is that it provides increased flexibility for implementing land use policy at the local level. It also is generally compatible with other common mechanisms and procedures used in the administration of planning and zoning.

Since the Purchase and Transferable Development Rights Programs are relatively new, the literature is beginning to grow. I suspect it will continue to become a more important part of our lexicon in the years ahead.

Another tool that has been used and widely touted is something called Right to Farm Laws which are now very prevalent. All states except Alaska, Louisiana, South Dakota, Nevada, and Wyoming have enacted such laws. Theoretically, these claws enable the farmer to avoid many conflicts with his neighbors due to any nuisance complaints that might arise. Some of these Right to Farm Laws are now being enhanced by requiring farmers to follow the best management and soil conservation practices on their land so that optimum management can be achieved.

I would also like to mention programs in several states that I think are worthy of our attention. I believe that Wisconsin's program is one that offers some innovative ideas. It is the use of zoning, combined with the use of tax incentives and a portion of good long-term comprehensive planning, is the kind of program that is worthy of consideration. It brings together the interests of people who live in both metropolitan and rural areas and forces master plans to be developed and implemented. The program then provides tax incentives to move ahead and achieve its goals.

Michigan has another program that I think is worthy of consideration. This involves the use of a circuit breaker approach to achieve the program's objectives. It is also tied together with a zoning feature. The tax credit provisions of this are interesting in that they come from the state. In other words, the people of the State of Michigan pay for the cost of the program. I think that that is a feature that needs to be factored into anything that comes out of this conference.

Another program worthy of consideration is the one from Maryland. Again, it brings together the interesting combination of identifying the need for farmland preservation and it has interesting funding and bidding mechanisms which I think are important ingredients of the program.

Finally, I would like to turn back to New York and talk about it for the rest of my time. Through the courtesy of the Department of Agriculture and Markets, I put together a database that shows where agricultural districts are located throughout New York. What I have done is taken the existence of any agricultural land that is in an agricultural district and plotted it by town and what you get out of this is an interesting finding. Of the 932 total towns in the state, there are 693 that have some land in agricultural districts. As you know, we go through an eight-year review of agricultural districts in New York, and some lands are taken out while other lands are added. Consequently, the number of towns can vary over time. The interesting thing is that there are areas in which there are no district activities, such as sections of the lower Hudson Valley and areas around Albany, Syracuse, Rochester, and Buffalo.

The challenge facing this conference is to look at what we have in the way of existing enabling legislation, examine the things we have done in terms of bringing together planning at the county and town levels to create agricultural districts, and use the array of available tools which include purchase of

development rights, transfer of development rights, zoning, and comprehensive planning at the country level to overlay on top of the planning that went into the formation of agricultural districts. Then take that quantum leap that I mentioned in my conclusion and move ahead to find the combination of institutional arrangements to meet that challenge.

There are some areas currently being developed that are not going to be economically viable agricultural farming areas; we might as well face that fact. On the other hand, there are some areas that, if we do not take very proactive roles, are going to spill over and become marginal through the impermanence syndrome. I think that we need to take the collective wisdom that comes out of a group of people like yourselves and sit down and look ahead to determine what we want for our communities. Are we willing to sacrifice the very best land in the best agricultural parts of this state and allow that to be jeopardized by continuing movement of non-farm interests into those areas? That is the issue that states have been addressing, and it is the focus of this conference.

The bad news is we have not found that single legal elixir that will solve all the problems. The good news is that we have not given up and that we now have a coalition of people from many different interest levels who are willing to focus on the problem. Now is the time to take that quantum leap. Be bold. Suggest new ideas that include the whole array of tools that are being used so successfully around the country.

THE MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM

GERALD TALBERT[1]

History

On July 1, 1977, the Maryland General Assembly enacted the law which created the Maryland Agricultural Land Preservtion Program. It was the culmination of several years of discussion, debate, and research. In the early 1970's, several major factors influenced the decision to create a program to ensure that farmland would be preserved for future generations.

One factor was the release of national statistics which showed an alarming rate of farmland being converted to other land uses. Maryland's figures were proportionally high due to extensive development already in place in the Baltimore - Washington corridor. Most of the counties affected by this rapid urban growth began to enact strict agricultural zoning. Development densities ranged from one dwelling per 20 acres to one dwelling per 50 acres. Several of these counties encountered stiff resistance by farmers who felt that the new zoning deprived them of full equity in their land without compensation.

Another factor was the gasoline crisis. Once it was understood that inexpensive long distance transportation costs could no longer be taken for granted, state leaders confirmed that the local production of agricultural products was an essential issue of state concern. So, instead of relying on a few major food-producing regions in the country, potential disasters from a drought or other catastrophes in those regions can be minimized.

Another critical factor in the creation of the program was strong support by the Maryland Farm Bureau, the agricultural community, and county and state leaders. The Maryland General Assembly passed a joint resolution in 1973 to create a Task Force to study the issue. A year later the Task Force submitted a report which concluded that a strong need existed for a program to preserve farmland. During that time, the Task Force researched the few existing farmland protection programs in the country, including Suffolk County, New York. Eventually, the Maryland Program incorporated some of the components of those other programs.

Senator James C. Clark, now retired, was a man who believed strongly in the need for farmland protection. As President of the Maryland Senate, he was instrumental in getting the bill passed. He is generally regarded as the founding father of the program, but he could not have been effective without widespread support in the agricultural community.

Description of the Program - District Establishment

The decision by landowners to participate in the program is completely voluntary. The first step is the establishment of an agricultural preservation district. There are two basic criteria for creating an agricultural district. They are size and productivity. An agricultural district must consist of at least 100 contiguous acres, but if an individual landowner does not own 100 acres he and his neighbors may create a district together. We use soil types to measure the productivity of the land. This is determined by using the USDA-Soil Conservation Service Land Classification System. At least 50 percent of the soil types on the

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land must be classified as either Class I, II, or III. Wooded land is also eligible to participate. The soil types on wooded land must be at least 50 percent Woodland Group 1 or 2. There are some exceptions to these size and productivity requirements depending on certain conditions.

The district approval process begins on the county level. A five member agricultural preservation advisory board and the county planning and zoning body reviews the petition to establish a district. It then makes recommendations to the county governing body. The planning and zoning department reviews the subject property to ensure that it is compatible with the county's comprehensive plan and growth management policy. A public hearing is held prior to the county's decision and all neighboring landowners are invited to attend. Public hearings are good advertising for the program.

Once approved on the county level, the petition is sent to the Maryland Agricultural Land Preservation Foundation for approval by the Board of Trustees. The Board is composed of 11 members: The Secretary of Agriculture and the State Treasurer are ex-officio members and of the nine at-large members, at least five are farmers from across the state. The Agricultural Commission, the State Grange, and the Farm Bureau each provide nominations for one of the farmer representatives.

When the Foundation approves the petition, a district agreement is signed and recorded in the local land records. The landowner agrees not to use his land for residential, commercial, or industrial use for at least five years. There is no financial compensation to create an agricultural district, but once land is in a district, the landowner is then eligible to offer to sell his development rights to the Foundation. We currently have over 1,000 districts protecting 156,000 acres in 22 of the state's 23 counties.

Purchase of Development Rights

If a landowner wishes to sell his development rights easement, he submits an application by June 1st of each year. In it, he submits an asking price. This is his determination of the difference between the full fair market value and the agricultural value of the property, plus any discount he may wish to apply. The program is designed to promote competitive bidding as there are usually more offers to sell than the state has funds to purchase.

The landowner, after the sale of the easement, retains full agricultural value of the property and may sell the property for whatever the market will bear. Generally, the value of the easement purchase, plus the remaining equity (or the agricultural value) of the property should at least equal the value a developer would have been willing to pay. The benefit to the landowner is the opportunity to receive a substantial amount of cash (averaging over $120,000 for a 150 acre farm) while he retains full ownership and agricultural operation of his property. Most landowners use the money to either get out from under an oppressive debt load, upgrade their equipment, or invest the funds for retirement. In many cases, the easement sale has made the critical difference between whether a farmer stays in business or not.

This is not an entitlement or "give-away" program. An easement is imposed on the property in perpetuity, forbidding the use of the land for residential, commercial, or industrial use forever. A deed of easement is recorded in the local land records and runs with the land. The law does allow a landowner to request to buy back the easement 25 years after settlement, but only if the Foundation and the local government concur that "profitable farming is no longer feasible." We stress to landowners that they should not count on buying their easement back; it is not intended to be a 25 year program.

One of the conditions for an easement purchase is that the landowner implement a soil conservation and water quality plan on the property. We require this to maintain the productivity of the soil and to protect against pollution to streams, rivers, and the Chesapeake Bay.

After an application to sell an easement is received by the Foundation and has been approved by the county governing body, the Foundation orders two separate appraisals to be conducted on the property. The appraisals are performed by independent, private appraisers qualified to establish both fair market and agricultural values. They bid for the job as required by our State Procurement Law. One of the two appraisals is selected as the benchmark against which the landowner's asking price is compared. The offer will be either the asking price or the appraised value, whichever is the lower of the two.

Once the two values are known, the applicants are ranked by a ratio determined by dividing the appraised value into the asking price. If the asking price is less than the appraised value, the ratio will be less than 1.0. Applicants are ranked by ratio in ascending order. This gives preference to the applicant who applied the greatest discount to his asking price. This form of competitive bidding allows the Foundation, in many cases, to pay below the appraised value. This procedure has allowed the purchase of over 10,000 acres more than if the Foundation just paid the full appraised value. In other words, more people have been served and more easements have been acquired through this program. If, however, the landowner's asking price equaled or exceeded the appraised value, as it does over 50 percent of the time, then the Foundation offers the appraised value. Applicants are free to reject any offer they do not find to their liking.

Offers are made in two rounds. Round One is held in each county with competition limited to only those applicants within the county. Anyone who did not receive an offer in Round One is eligible to participate in Round Two where they are re-ranked on a statewide basis. One half of the State Fund is equally allocated among the 23 counties. The other half of the State Fund is used to match additional county funds (although matching is not mandatory) on a 60 percent state, 40 percent county match. The formula to divide the State Fund is ingenious because an equal share of one-half of the fund is available to farmers even if the county does not provide any funding. But, for every county dollar provided, the state will enhance its purchase power by 60 percent. County funding, which has ranged from $0 to $1,000,000, adds an average of $2,000,000 to $3,000,000 to the state's purchase power. By having two rounds of offers, each county can maximize its opportunity to buy easements in Round One with matching funds and minimal competition. A landowner with a competitive ratio in a poorly funded county, however, stands an excellent chance of getting an offer in Round Two because he will rank favorably on a statewide basis. It is a very fair and impartial system.

Of the 1,000 districts (156,000 acres) almost half of the districts (472) have taken the permanent step of selling their development rights. The total cost for 70,750 acres has been $56,800,000 over the last nine funded years. This averages out to be $803 an acre, but individual offers have ranged from $100 an acre to $3,500 an acre.

Funding

Maryland's program was established for two years before funding was arranged for the purchase of easements. By fiscal year 1980, $2,000,000 was provided from a portion of the proceeds of real estate transfer tax. This is a 1/2 percent (0.5) tax levied on all properties which are sold as a part of settlement cost. The real estate transfer tax was created in 1972 to fund Program

Open Space, a program established to acquire state park and recreational land. The Foundation has received an average of $3,000,000 a year from this source up until fiscal year 1989, when a change in the law authorized $5,000,000 in annual appropriation to the Foundation.

Another source of revenue for the program is the proceeds of the agricultural transfer tax. This is a five percent tax levied against all farmland that is converted to another land use. If a farm is sold to another farmer, he files a notice of intent to farm and the tax is waived. Our annual revenue from this source has ranged from $2,000,000 to $8,000,000. It is appropriate that those who help create the problem of a disappearing agricultural base contribute to the effort to preserve the farmland that remains.

These combined revenues have yielded between $7,000,000 and $12,000,000 a year in the past several years, plus an average additional contribution of $2,000,000 to $3,000,000 in county matching funds. These funds are all designated as "special funds." The unexpended portions of the funds are not required to be remitted to the State's General Fund at the end of the fiscal year.

Problems

Perhaps the most persistent problem in operating this program is the amount of time it takes to acquire easements. From the application deadline of June 1 each year until settlement on the purchase of the easement, the average time is usually between 12 and 18 months. The reasons for such a lengthy process are: counties are allowed two to three months to review and approve easement applications; the appraisal process takes five to six months; the ranking and offer process takes two to three months; and the settlement process takes three to six months.

The Foundation has revised its procedures several times over the last few years and has implemented many time-saving measures. We recently reviewed our progress with Governor William Donald Schaefer and he asked us to continue to reduce the time required for our procedures. We must work to provide timely service to landowners while being careful not to squander large amounts of public funds. Also, we must be sure that our records reflect balanced accounts and provide adequate descriptions of every square foot of land.

In the next legislative session we anticipate several law changes. These changes will not only address the problems of streamlining procedures, but will revise the process a landowner may take if he feels that the appraisal performed on his property is incorrect. Although requests for arbitration on appraisals account for only about three percent of the total number of applicants, the current arbitration process is both time consuming and frustrating for all concerned parties. We propose the establishment of one central board of professional appraisers appointed by the Governor to hear landowner's cases. The decision of that Appraisal Review Board could be appealed to the Board of Public Works if necessary. The Board of Public Works is composed of the Governor, the Comptroller, and the State Treasurer and it also gives final approval on every easement sale.

These proposals are strictly in the formulative stages and much debate could occur before they are passed into law. I mention them only to illustrate that although overall the program is enjoying great success, there is still new policy yet to be developed and new procedures to be put in place to solve old and new problems.

Perspective

The Maryland Agricultural Land Preservation Program is now in its twelfth year. It is our understanding that the Maryland Program has the most successful Purchase of Development Rights Program in the United States. There are a number of factors that were critical in achieving that designation.

First, it was the agricultural community that perceived the problem and acted while there was still time to create an effective program. The support of the Farm Bureau and other agricultural organizations provided county and state leaders with enough foresight and courage to make it a political reality.

Second, those leaders did not stop until an adequate funding source was created. We can not realistically expect enough private landowners to provide an adequate land base without fair compensation. Mere dedication to the idea of preserving farmland for future generations is not sufficient motivation when it requires relinquishing a significant portion of the most valuable equity most people possess. The bottom line is that preserving land requires cash. Counties with existing restrictive agricultural zoning promote our program. Even though our appraisals reflect current zoning, the program is an option where the farmer feels he has provided a significant public benefit for which he has been fairly compensated.

Third, the ingenious design of this program provides competitive bidding which yields cost effective purchases and stretches the buying power. Counties add to the buying power by providing additional matching funds. This is beneficial to both the county and the state. The funding formula provides a minimum equal share to all participants but the ability to add matching funds increases participation in the matching counties. Ranking is done strictly "by the numbers" without being capricious or arbitrary. The first person who receives an offer is the one who offers the best deal to the state. Ranking is not politically influenced.

Fourth, it is a voluntary program. The real measure of success in a voluntary program is that individual farmers are still willing to voluntarily participate. We have been experiencing an annual growth rate of between 12 and 19 percent in the establishment of new agricultural preservation districts, and a 22 to 30 percent annual growth rate in the purchase of easements. Our most effective form of advertising is by word of mouth. Neighbors talk to program participants and many of them join. In many counties we have seen an original agricultural district grow as large as 2,000 to 3,000 acres and they are still growing. Within the borders of an area that size there lies an agricultural community with agricultural suppliers near by. This creates a significant buffer to urban expansion.

These areas were still predominantly rural when the first districts were formed and they were far enough away from imminent development that enough time could transpire for the voluntary process to take place. Such a process would not be effective in a rapidly changing transition zone where farmers have already given up hope for a future in agriculture. For this reason, we do not target our efforts towards farms under the greatest threat of conversion because the chances of creating a contiguous mass of significant size is unlikely.

Although the Maryland Program has enjoyed its success, it still has a long way to go. The annual conversion of farmland to other land uses continues to exceed the amount which is saved. Our hope is that in the face of ever increasing demand for the use of land, the supply of which is static, there is still an agricultural future in the State of Maryland. We are happy to offer whatever assistance we can to other states with the same desire.

FARMLAND PRESERVATION IN MASSACHUSETTS: A FARMER'S EXPERIENCE

JIM WILLIAMS[1]

In the state of Massachusetts you can see a lot of open space if you stay on the main highways, but once you get off the major highways you see fewer and fewer open fields today. Massachusetts is rapidly losing its open agricultural space to commercial development, new housing, and general growth. This is driving up the cost of land and making it increasingly challenging for farmers to remain in operation.

Our family farm is located in the Connecticut River Valley close to Amherst, Massachusetts, a Valley blessed with fertile soil and favorable growing conditions. This land has been used to grow a variety of vegetables, tobacco, and most recently corn, as dairy farming in the Valley becomes more prominent. The close proximity to Amherst and nearby Springfield and Hartford is beneficial to vegetable growers who have a ready market. On the other hand, it has encouraged businesses to locate in the area due in part to the large number of nearby colleges: Amherst College; University of Massachusetts; Hampshire College; Mount Holyoke; and Smith College. These have drawn a lot of people to the area who then decide to live in the Valley. This, in turn, drives up property values and encroaches on agricultural land.

Our town became concerned about the alarming amount of farmland being converted to non-agricultural uses as far back as the late 1960's, and decided to do something about it. One of the early proposals envisioned was a Transfer of Development Rights (TDR) Program. This Program has not been used much in past years but has recently gained greater acceptance. A couple of problems local townships often encountered when looking at measures to retain agriculture were:

1) Landowners or farmers seemed less concerned about the development of agricultural land than townspeople, probably because of the amount of money they could receive by selling their land. In addition, many farmers considered their land as their retirement savings and they wanted to be able to sell it when they retired.
2) Another problem occurs when a farmer passes away and the land is left to heirs who are not as committed to retaining the land for agricultural purposes. They are more interested in the land's value for development which often results in agricultural areas being broken up.

Our family decided to look into farmland protection programs that would help assure our desire to remain in business, for a number of reasons:

1) To save the land and keep the farm in our family;
2) To help pay off some debt;
3) To expand our operation; and
4) To save a little money for retirement.

The program we utilized was a Purchase of Development Rights Program (PDR). That enabled us to achieve the above goals by selling the development rights to our land while retaining title to the land and continuing to cultivate it.

Farmland preservation or retention programs allow for a large degree of flexibility on the part of the interested party. This sometimes makes the

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[1]Mr. Williams and his family operate a 170 cow dairy farm in Central Massachusetts. Their farm has been in the family since the American Revolution.

programs time consuming to put together. In addition, for some municipalities and governments, this is still a new concept. This was the case with our application, and as a result it took about 18 months for the complete transaction to take place. A problem connected with the long time it often takes to complete a PDR transaction is that land prices are escalating quickly and by the time the PDR transaction is completed, the value of the development rights is often higher than the price that was originally agreed to. Therefore, farmers sometimes feel slighted on the price they receive for their development rights.

Another problem with the Massachusetts program is the state's ability to raise money. Current funding is obtained through periodic bond issues. This means there is no steady flow of funds to keep the program running. As a result, when the program slows down due to a lack of funds, interest in PDR and farmland preservation declines. The legislature has looked at real estate transfer taxes as a more permanent funding source, but has not been successful in passing such legislation.

A final problem lies with landowners, both farmers and those who are simply renting land to farmers. The problem arises when these landowners are more interested in the land's value for development than retaining the land for agricultural use. This makes it difficult to retain a "critical mass" of agricultural land. Farmers who have participated in a PDR program to date have been fairly quick to accept the merits of the program. The ones we now have to convince to participate control important agricultural land, but are often very cautious of farmland retention programs.

Finally, I want to reiterate my concern that it is critical for this generation to save farmland for future generations. The land is always going to be there, but the pressure on this finite amount of land is going to continue to increase. We must undertake every effort possible to assure that farmland will be available for others to farm in future generations.

FARMLAND PRESERVATION IN CONNECTICUT: A FARMER'S EXPERIENCE

WILLIAM MINTZ[1]

My parents bought our present farm in 1943 with the intent of milking a few cows for a steady income while they developed a vegetable growig operation. They built a little stand and as things progressed, the farm got smaller and the number of cows grew. My brother and I purchased the farm about ten years ago, and at that time we were milking 100 cows, with no more than a little backyard garden like any normal subdivision would have. At that point, our total farm consisted of approximately 50 acres. Since then we have rented another 250 acres which was cheaper than owning the land ourselves.

As development closed in more and more land was taken away from production agriculture. In 1984, we were forced to purchase forage crops for the first time. At that point we began traveling into New York and Pennsylvania for feed and farm equipment. The problem is, with farms so few and far between in Connecticut, we only have three or four major agricultural implement dealers in the whole state. Therefore, the supply is very limited. So, if you do not want what they have on the lot and you are not willing to wait several months before they get what you want, you travel.

As we started to feel pressure from development all around us and land for rent became less and less available, we began to wonder what we were going to do. We even considered moving and starting up somewhere else, since 50 acres was an impractical land base for over 100 head of cattle.

When we first heard about the Purchase of Development Rights Program, we thought that even if we went that route we still could not survive on 50 acres. We thought we would probably sell the entire farm before we would sell our development rights because the land is worth so much. Then in late January of 1985, we heard some news that eventually changed all of our plans. You can talk about women gossiping, but have you ever been around when the milk truck pulls in? That is when you find out everything that is going on around the county. Well, we found out from our milktruck driver that the farmer across the street might be selling. He had approximately 140 acres across the road from our farm, most of which was prime agricultural land. After hearing these rumors for a couple of weeks, my brother finally went over and asked our neighbor if he was really selling his farm. At that point our neighbor was unsure. He had just learned that he had cancer, and his prognosis was not good. He had another appointment in two weeks and at that time he would make his decision on whether or not he would sell.

Two weeks later he came over and told us, "I'm selling, I have a developer waiting to hand me a check." We asked him to give us some time to allow us to push some pencils and see what we could come up with. We contacted the State Preservation Department and our local County Cooperative Extension Office and we had an application filled out and in the mail on February 12, 1985.

At that point, we had no formal contract with the farmer across the street. He was willing to sell his development rights, and in order to get some of the money for a down payment to buy his land we had to sell our development rights too. At that time we were looking at an average of one and one-half to two years for the sale of development rights process to be completed. Our neighbor did not

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[1]Mr. Mintz operates a 130 cow dairy with his brother in Middlefield, Connecticut.

think he had that much time left on this earth, so he wanted all of his affairs cleaned up on six months.

We tried to find enough money to buy the farm out-right and then sell the development rights ourselves, but we just could not come up with the money. We finally came up with a plan where Farm Credit would loan us the money. We would just pay the interest while FmHA guaranteed the loan. At this same time, a freeze was put on all FmHA money, so that killed our plan. Furthermore, we discovered that if we took all of the money FmHA had in our district, and all they had in our neighboring district, there still would not have been enough money to service our needs.

Six months later we finally reached an agreement with our neighbor. He had just undergone some experimental tests and his prognosis was looking better, so he decided he had time to wait. In May we received an experimental offer from the State of Connecticut for both farms, so we put a deposit down on the farm across the street. It was not until June 4th that we received a written commitment from the state on what they would offer us for the development rights. Soon after that, they came and took several water samples from our wells to make sure they were not polluted or contaminated in any way.

By the end of June we had approval from the State Department of Agriculture and the Property Review Board, and the funds had been allocated by the bonding company. At that point, the land had to be appraised and surveyed. The State of Connecticut requires at least three separate bids by private, certified appraisers to be submitted. This process alone takes two or three months before everything is approved and ready for action. The next step is for all of the land to be surveyed. Again, this requires another bidding process, which can take another couple months. All of this meant that we were looking at another six or seven months of bidding and red tape before anything really got started. So, considering the circumstances, we opted to have the surveying done ourselves. By hiring a surveyor directly we eliminated the lengthy bidding process, although the state still had to approve the surveyor, the survey itself, and the price. It cost us $11,000 to have both farms surveyed, although the state did reimburse us for half the cost. In the end it cost us $6,000 to circumvent the bidding phase and speed up the process by three months. Then, on November 19th, approximately nine months and one week from the day we mailed our application, we closed. I do not think anything has ever moved that fast in the state before, or since. The average time for processing an application is generally 12 to 14 months.

The major problem with this entire process is the time factor involved. I found myself on the phone two and sometimes three times a week to the Department of Agriculture. I would call up Mary Goodhouse, the Program's Director, and say, "Mary, where is my application?" She would tell me the status of my application and tell me to call tomorrow. I would call the next day and ask the same question. Then I would ask where it went next, and call that person. It takes alot of patience and persistence and you cannot be afraid to get on the phone and check up on people.

Now, I would like to highlight what I feel are the positive and negative aspects of Connecticut's PDR Program. I will begin with the positive points. The Program enabled us to buy enough land so we could continue farming in the town we wanted to farm in. We grew up in Middlefield and we wanted to stay there. With the addition of this land, we now feel confident that we can survive, even if we are squeezed out of our rental option. We were able to purchase some good farmland, although our debt load went right to the limit. Luckily, our cows came around and started milking well, so we should be in pretty good shape.

The negative side to this program is the length of time involved. As I said earlier, I had to do alot of hounding and pressure on alot of people. When things got held up, I would have to threaten a little by saying "Should I call my legislator? He said he'd help me." That usually helped speed things up. Alot of the discouragement lies in the fact that once a farm is appraised, eight or ten months later before anything gets done, the land is already worth much more.

For example, in 1985, building lots in our town were averaging $80,000 to $90,000 for an approved building lot. Today, the average has risen to $100,000 to $125,000. We recently had one of our lots reappraised at $125,000 to $150,000. So things are moving very fast.

At first we were very reluctant to sell the development rights to our land because in doing so, we would lock ourselves out of this inflation. Ultimately we decided that that was what we wanted to do. Our hope is that in time agricultural values will increase as there becomes less and less agricultural land available. The nursery industry is very strong and the pick-your-own fruit and vegetable business is gaining strength. We feel that if our farm is ever sold, it would most likely go to one of these operations or perhaps be used as a horse farm, which is also a very strong industry in Connecticut. There are many uses for a farm other than dairy.

People in our town seem generally pleased that we sold the development rights to our land and that the land will remain in agriculture. For example, our manure pit is about 1,000 yards from the town hall and when we stir the manure we tend to smell up a good portion of the town. One day I was down at the town hall and one of the girls there said, "You know, it [the manure] may smell, but it smells a heck of a lot better than condos." On the same note, our local real estate agent who had helped us establish a price for our development rights said to us, "This is going to hurt me personally by not having 100 houses built across the street, but I live in town. I'm glad to see it [the farm] stay." The problem is, however, that although people tell us they are glad we stayed, no one says, "we're glad to see milk produced here." The average person just wants the land to remain open, that is all he/she cares about. People move out to the country for the country.

Another problem is that we need more right to farm protection. We would like to see the State of Connecticut have more control over land surrounding farms, even if it just states in the deed that you are moving next door to farmland, do not complain. There is a building lot that sits right in the middle of our farm, 75 feet away from our manure pit and 15 feet away from one of our sheds. We cannot afford to buy that lot at this time. Eventually, someone is going to build on that lot and be closer to our farm than our own houses are. That bothers us. Even though we currently have a Right to Farm Law in Connecticut, we are not protected from civil suits, we can still be harassed and taken to court. We really need more protection along this line.

One thing about the State of Connecticut is that the state cannot make the first move in purchasing a farm. The farmer has to make the initial move. The state cannot go out soliciting prime farmland. It has to wait until the farmer wants to sell. Currently, development rights are being purchased anywhere from $700 an acre to as much as $10,000 an acre. We received $2,000 per acre for our development rights, while our neighbor across the street got $2,500 per acre for his.

I believe we are moving in the right direction. However, greater dollar values still need to be placed on development rights in order to save some of the fertile agricultural land in the Connecticut Valley. Our farm is about four miles from the Connecticut River and some of the best land in the world is located in

that valley. Land is selling for very high prices all around us, so we need to get the agricultural value up in order to be competitive.

Another problem is that most of our neighbors do not realize what the Development Rights Program is or how it works. Most of them think that either the town or the state now owns the land; they do not realize that I still own it. So, there is a real need for more public education on the Purchase of Development Rights Program.

To sum it up, I would have to say that under the circumstances, we would probably participate in the Program again. But, if the farm across the street had not been up for sale at the right time, we probably would not have sold our development rights.

A HISTORICAL PERSPECTIVE ON SOME ASPECTS OF RURAL LAND USE GUIDANCE

HOWARD CONKLIN[1]

They tell me I am getting old enough, so I have earned the privilege of reminiscing a bit. Maybe they are right. It wa in fact just about 50 years ago that I started my first research project. It resulted in a USDA publication entitled "The Possibilities of Rural Zoning in the Sierra Nevada Foothills of California." The assignment in that case was to take the rural zoning ideas that were being used very successfully in Wisconsin, Minnesota, and Michigan and see if they might work in California.

Rural Zoning, as they were using it in the Lake States, was patterned after the newly developed urban zoning that had been adopted in some of the major cities. It was an exercise of the police power of government. Under it people were being told how they could use their property. But as used in the Lake States, zoning had a very different purpose than it had in cities. Big areas in those states had been cut over for lumber and the land was being sold to people who were trying to pull the stumps out and make farms of it.

Farming in most of Northern Wisconsin, Minnesota, and Michigan was foredoomed to failure. The land was worse than the poor areas of New York State. A lot of people were being sucked into a hopeless quicksand; they had no chance. The laws and policies of those states called for supplying roads, schools, and other public services to the new settlers. They also called for making welfare payments to the settlers to keep them from starving. Consequently, these costs were jacking up taxes for people in good land areas. A lot of people began to wonder why the new settlers should be permitted to start farming where the old heads knew they had no chance.

Rural zoning was invented to help solve this problem. Zones were outlined on maps and it was made illegal to farm, or even live, in zones where the land was too poor. The rural zoning program was supported by old settlers who were established on good land because it helped hold down their taxes. Many of the would-be new settlers were unhappy, as were the speculators who had bought the poor land from lumber companies and hoped to sell it for high farm prices. But there were more happy than unhappy people, so zoning held. In time, those who would have been sucked into the quicksand came to appreciate the efforts of those who promoted zoning.

My job in California was to take the gadget that had been well accepted in the Lake States and figure out if it could be useful in a new setting. Rural zoning already was becoming controversial, as you might guess. It was controversial even in the Lake States and the further it spread from there the more controversy it stirred up. So I was embarking on a path strewn with bear traps. There were those who had hooked their professional future to the promotion of zoning. At the other extreme there were those who hated the idea of curtailing anyone's freedom in the use of land, especially their own freedom. I was doing the study as an employee of the United States Department of Agriculture, so I was targeted by people at all levels of government as well as by local people.

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[1]Mr. Conklin is a Professor Emeritus from Cornell University.

Under the circumstances, I decided to do two things. First, I would talk with a lot of people in the field -- the people who would have to put zoning in place and live with it if it were to be used. Second, I would call a spade a spade, as I saw it, without taking sides in the heated discussions. There was no chance I could avoid making some people mad, but that is true of most land policy research.

I predicted that rural zoning similar to that used in the Lake States would not work in California. There were few misguided settlers and the costs of roads, schools, and other public services were not being paid locally. Also, many of the newer settlers had come to the Sierra Nevada foothills to get away from being told what they could and could not do in the cities. They were independent spirits and would fight regulation. More than this, there were no other problems that zoning could acceptably solve.

Rural zoning as we knew it in the 1930's was not adopted in California. My prediction was accurate, though it was many years before I was sure of it.

I returned to New York in 1941. Here, instead of taking a gadget and estimating if it would work in new circumstances, I simply picked a rural area and studied the economic activities and the general attitudes of the people living in it. The area was roughly a 15 mile semi-circle around the Elmira-Corning urban center, with a small slice south of Rochester for comparisons. Later I made many other generally similar studies in various parts of New York. I also made specialized studies of farmers and farming activities in various parts of the state.

Abandoned farmland represented a major problem in New York in 1941. The people were not new settlers as they were in the Lake States. They were old settlers, but their land was not adapted to the new ways of farming. Their forefathers once were successful farmers but new technology was forcing them out. We could have spent a lot of time studying the possibilities of Lake State zoning here, but our problem really was very different and we came up with a very different answer. Instead of trying to keep people out of areas unsuited to farming we promoted programs to attract and facilitate nonfarm settlement in those areas. Our studies told us very early that interest in rural living was growing as rural roads, schools, and other public services were being improved, with generous state aid, across the countryside. Nonfarm employment opportunities were also growing fast within commuting distance. We found that many rural non-farmers had low to moderate incomes and had purposefully chosen rural living in preference to life in a city. For many, life in an urban setting would have meant being in rented housing, often in unhappy neighborhoods.

A few of the new rural residents were quite affluent; they were semi-suburbanites. Also, true suburbanites began multiplying by the millions soon after World War II. We turned some of our attention to suburban growth and the problems associated with that.

We began to see the suburbs as home to generally affluent, aggressive, and articulate people who tend to be very mobile. (IBM stands for International Business Machines. It also stands for "I've been moved!"). These people came to demand a rather narrowly stereotyped kind of residential complex. They have certain aesthetic preferences, but in particular they want a house that can be easily and quickly sold to someone who is moving on short notice. They do not want neighbors who do unusual things nor whose income levels limit them to unsightly structures and activities.

It became clear to us that planning as a profession was coming into its own on the basis of its skill in keeping the riff-raff out of the rapidly growing suburbs. Planners took on the job of excluding deviants. They undertook to come

up with ideas that not only would be effective but also would not run afoul of the egalitarian provisions of our constitution as interpreted by the courts.

Planners have been highly successful. They learned how to keep the riff-raff out of the suburbs and make it stick legally. Zoning is the principle device they use, but building codes and other instruments are used as well. Constitutionally, they make their case rest on health, safety, and general welfare. As planners multiplied in numbers, and as suburban growth began to taper off, they began to take an interest in rural areas. Some of the affluent semi-suburbanites -- suburbanites in lifestyle but too far out to benefit from suburban land use regulations -- also began to press planners for help. But planners found it hard to stretch their legal justifications for land use controls beyond the suburbs. Suddenly some one came up with the idea of saving farmland. Those were the days when agricultural surpluses were moderate or low and when some very knowledgeable people were suggesting that the world might run out of food.

The idea of saving farmland caught on widely. It offered the possibility for legitimizing all sorts of land use controls in rural areas, as health and safety considerations had done for the suburbs and cities.

Governor Rockefeller created the Office of Planning Coordination (O.P.C.) in the middle 1960's and gave it a broad mandate to plan for all of the state, including the rural areas. By 1970, this agency had developed a proposal (Study Bill 9028 of 1970) to give the state a much more active roll in the planning and control of land use. For one thing, planners looked at this proposal as one that would be able to overcome the obstinate resistance of rural people to zoning. The idea of saving farmland was built into it. But the proposal involved much more than rural areas and this was its ultimate downfall. Under it the state could have controlled land use in the suburbs.

I was invited to participate in discussions of Bill 9028 in its formative stages and I kept telling O.P.C. that rural people would not like it. Their reply each time was, "Yes, rural people will not like it, but they do not have enough power to do anything about it." It never occurred to me or the planners that suburbanites would not like it either.

A couple of years or so prior to that time the Governor also had created another agency, the Agricultural Resources Commission. I worked closely with this commission throughout most of its life. The Agricultural Resource Commission originally was called the Commission on Preservation of Farmland. The idea of preservation and the focus on land thus were explicit in the original mandate. But most of us did not like this mandate and our thinking quickly turned to promoting, facilitating, encouraging, and developing rather than preserving, and to farming rather than to land.

From the beginning, I pressed for explicit acceptance of two basic ideas; (1) there is no chance for putting effective fences around cities; and (2) we cannot prevent rural nonfarm people from multiplying.

Already at that time farmers were out-numbered ten to one in their own communities and there simply was no way they or their children could be chased into cities or villages. Farmers needed to learn how to live with nonfarm neighbors and institutional arrangements needed to be worked out to facilitate the peaceable and productive coexistence of farm and nonfarm people. Secondly, there simply is no way in this nation to stop the outward march of the suburbs. Suburbanites are the group with the most political power in this country and they are not about to see opportunities for suburbanizing foreclosed. Nor are they even willing to accept land use guidance from higher levels of governments. Land use controls in the suburbs now are instituted and administered mostly by suburbanites themselves. Bill number 9028 would have introduced the possibility

that someone at the state level might get crazy ideas about permitting low income housing or other deviant uses in the suburbs, and force the suburbanites to accept them. This is why the Office of Planning Coordination's Bill number 9028 fell by the wayside. Rural people today would be subject to a lot of state land use controls if suburbanites had not defeated Bill 9028.

Rural people, however, were working hard on an alternative to the farm zoning ideas that were implicit in Bill 9028. The Agricultural Resource Commission created a proposal that would facilitate the pleasant and productive coexistence of farm and nonfarm people. Their proposal was ready at the time O.P.C.'s Bill number 9028 was in its final stages. It was a proposal for agricultural districts.

Governor Rockefeller would have been happy to sign Bill number 9028. He told the Agricultural Resource Commission to hold any proposals on Agricultural Districts until the fate of Bill 9028 was known. In February 1971 the Legislature cut the Office of Planning Coordination's budget by 60 percent and changed its name. It never even considered Bill 9028 for passage. The suburbanites had sent clear messages very quietly to members of the Legislature. They did not want the state messing around in their territory. Immediately the Governor asked for our agricultural district proposal and it passed the Legislature unanimously.

SUMMARY

There are several ideas that a walk through the history of land use guidance can call to mind:

1. It is very helpful to analyze policy proposals in the light of who wants what and the political power they have. Doctrinaire analyses are not very useful.
2. The idea of facilitating the intermingled coexistence of farm and nonfarm people is a viable one, though we have a long way to go to make it fully useful. The agricultural district device can be considerably improved.
3. Planning, as practiced by most planners today, is well suited to the wishes of suburbanites but not to those of rural people. Planners need to learn a lot more about rural people.
4. Many potentially good ideas never fly because no one carefully tailors them to the needs and wishes of enough influential people.

PRIVATE TOOLS FOR PRESERVING FARMLAND

JOHN HALSEY[1]

Long Island is a very interesting subject for the rest of New York State because of the amount of development that has occurred in one of the strongest agricultural counties in this state, Suffolk County. It is the inexorable movement of New York City that really is the cause of Long Island's growth. As Nassau County was developed farm families moved further east. People already in Suffolk County, however, could not go any further east. We are running out of farmland in Suffolk County and it is a big problem. It poses substantial issues to those who are farming and want to continue to farm.

The Peconic Land Trust was set up in 1983 as a private non-profit conservation organization. Its purpose is to work in three areas: planning, acquisitions, and management. First, we help farmers and other landowners plan alternatives to outright development. Second, we are involved in the acquisition of land or conservation easements. Easements, as you may know, are perpetual restrictions imposed on land. They are very similar in result to the sale of development rights. Our third area is management. Once we have acquired land or easements, we have the responsibility of stewardship. In the case of easements, we monitor them and make sure that the restrictions that have been imposed on the land remain on the land. When we own land in fee then we acquire the management responsibilities, maintenance, and so forth.

Land trusts in general are a burgeoning movement. There are over 700 land trusts nationally and they vary in their focus. Some are interested primarily in agricultural lands; some are interested in open space in general. Land trusts have a big impact, I believe, on the preservation of farmland and open space throughout the country. There are also national land trusts and organizations such as the American Farmland Trust. They are generally of concern to farmers and other property owners.

Farmland preservation is an oft-used phrase but, as we all know, you cannot preserve farmland meaningfully without preserving the farmers. As a matter of fact, on Eastern Long Island farmers are now, in my book, an endangered species, along with the tiger salamander. We really have to look at ways of enabling the farmer to continue his activity. I am going to tell you a few horror stories just to give you an idea of the context within which our organization works. Hopefully this will give you an indication of the issues that you may face in other parts of the state in years to come.

Picture a 200-acre farm on the South Fork that has been in a family for ten generations. The farm is really the envy of most farmers on Eastern Long Island because there are 200 acres of beautiful level land, type one soil right out the backdoor. About eight or ten years ago the father, the sole remaining spouse in the family, died and adequate estate planning had not been done. Consequently, the family got hit with a $2.2 million estate tax. The family could not come up with that kind of cash, so they had to sell the land. Of course, they had to do it completely because Uncle Sam does not wait for estate taxes very long before penalties start to accrue. In cases like this, when you are up against the wall, you do not have a lot of leverage; you are not in a very good negotiating

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[1]Mr. Halsey is President of the Peconic Land Trust in Southhampton, Long Island.

position. So, the family contracted a developer who agreed to pay them a sizeable amount of money. I believe the sales price was over $4 million, but the developer did not pay until he got his final subdivision approval.

Of course the developer wanted to maximize the development on the land and get every house lot he possibly could, so it took him over three years to get final approval. What happened to the family? They were hit with a 47 percent penalty tax on top of the $2.2 million estate tax. Consequently, as a result of poor planning and bad advice the family ended up with very little when they finally sold the land.

Another example. A family's main farm was in their mother's name. When the mother died, the family was hit with an estate tax of $40,000 an acre. All the cash available in the estate was used to pay the taxes. Then they had to borrow nearly $750,000 to pay the balance. They had never had a loan quite that big. Their attorney advised them to sell some of their other land in order to pay the tax, which they did. The attorney then turned around and bought the land at probably 50 percent of its fair market value. The family did not know what hit them. There went about 40 acres of prime farmland out of the family and out of farmland use.

This raises a number of issues. One of the biggest problems on Eastern Long Island for farmland or any kind of land preservation is, how do you pass land on from one generation to the next? The land is simply worth too much. Then there are estate and property taxes to worry about.

There have been some changes in the penalties for people with land in agricultural districts. These have an impact on a person's decision to sell. Obviously, if they have valuable land in an agricultural district and they sell a portion of it, they have to pay a penalty. If the assessment is not very low to begin with they are going to get clobbered. There are also constant changes in zoning regulations. You cannot turn around without there being some zoning change at the town level. A family that is trying to preserve equity for their future, while simultaneously trying to figure out how to pass on their land, often has to subdivide the land. They subdivide because they are afraid that the zoning regulations will change. If this happened, they would lose their ability to create lots. It is a problem and, as we know, the land often is the farmers' retirement. It is what they have to fall back on.

Well, what is the land trust doing in this type of situation? We are working with farmers and their families to come up with a range of options to preserve their farmland. Some of the tools that we use include the conservation easement. A conservation easement, as I mentioned earlier, is the perpetual restriction imposed on the land. What that does from an estate tax point of view is plummet its value. What makes an acre of land in Sagaponack worth $100,000 is the ability to build a house on it. If a farmer with 100 acres puts an easement on 50 acres of his best farmland, land he never wants to see converted to residential use, the value would plummet from approximately $100,000 an acre to between $2,500 and $3,000 an acre for estate tax purposes. An easement also helps out from a property tax point of view. Obviously, an easement is a loss in equity, but we are dealing with situations where we have an excess of equity. It becomes a very useful tool in planning one's future or one's family's future.

Another aspect that we get involved in when planning is looking at the areas that provide equity for the farm family. The family may own some marginal land that they want to subdivide to make more readily available if need be. So in some instances, we will actually work with a family to show them what their limited development opportunities are in conjunction with the use of conservation easements.

We also have some families who have given the land trust what are know as testamentary gifts. For example, a widow would like to gift easements on her land over a period of years, but she does not want to do it all at once. How does she protect the land in the event of an untimely death? Well, she can add a codicil to her will stating that should something happen to her before she has had an opportunity to make all of her gifts of easements, either the land or the easements would go directly to the land trust upon her death. This would be taken directly out of her estate, thereby reducing the value that her heirs would have to pay in estate taxes.

As you can see, there are a variety of tools that land trusts can use in planning with a property owner. I also want to speak a little bit about public approaches to preserving land. The purchase of development rights, and other preservation programs, are very useful tools for a land trust to blend into its planning. For example, we are working with a farmer in Riverhead who owns some very valuable waterfront property, some marginal land that could be developed for housing, and a sizeable chunk of farmland that he would like to see remain in agriculture. By using a blend of public and private tools, he can maximize his advantage. For example, he can put a conservation easement on the waterfront footage that he never wants to see developed and gift it to the land trust. He can sell the development rights on the farmland that he never wants to have developed or converted to residential use to the county. Finally, he can subdivide and create lots on the marginal land that he can use for retirement or for his children. By using these combinations, the farmer has reduced his estate tax potential dramatically, yet he has preserved the equity that he will need in the future. Furthermore, he has made it possible to pass the property on to the next generation. So, the public programs are very nice tools to blend in with the private approaches that land trusts use. My way of reviewing the various public programs that are often recommended is to look at whether they are voluntary or not. Our organization focuses on programs which are voluntary. That is the beauty of the Purchase of Development Rights Program, the farmer has a choice.

One last example. We are working with another situation out in Orient Point where the state Department of Environmental Conservation is trying to acquire about 400 acres of land. Some of it involves agricultural land, but most of the land is owned by farmers. This puts us in a very interesting position and again, it shows how an easement is a very useful tool in negotiating. Many of these farm families in Orient have lived there for 10 to 12 generations. The wetlands that the state is interested in buying include dikes that protect the farmland from flooding. The state's attempted acquisition has raised a lot of issues such as the maintenance of dikes, the private property rights, and what impact state ownership is going to have on the farming practices next door. Is this going to put the state in a position to want to change some of the practices? It raises a tremendous number of issues. One of the things that our organization is trying to do in this instance is negotiate a middle ground. The state says it wants to acquire the land to protect it. Why not let the farmers continue to own their land through the use of conservation easements? Let us keep the land in private ownership by allowing the farmers to put conservation easements on the wetland areas. They can continue to own their land and be responsible for maintaining the land and dikes. Again, private organizations like the Peconic Land Trust can provide a middle ground between public programs and private property rights. This is something we are always striving to do. We are striving to preserve the farmer as well as the land, because why have a farm field if there is no one to work it?

The main point I want to make is that it is absolutely critical to anticipate the future as best as possible. We do not have crystal balls. We do not know what values of land will be 10 years from now, but we can get a pretty good idea. On Long Island, at least on the South Fork, we have seen appreciation of about 20 percent a year, which is unbelievable. We are not sure what it is now since the stock market crash last October; it will take a little time to see. Prices have not gone down, but they may not have escalated either. We have seen a reduction in the more speculative land development schemes that people have come up with. It is important to know how to pass on your land, and know what land trusts or other organizations, public or private, can do for you. I always say to people, if you went to a doctor and he told you to cut your legs off below the knee, would you not get a second opinion? Always get a second opinion when it comes to your land and your assets. Do not take one person's advice. Get as much advice as you possibly can, and the best advice you possibly can. There are, as we well know, people out there that will take advantage of one's trust.

Finally, I want to suggest a couple of resources. The Peconic Land Trust, as well as many other land trusts nationally, are affiliated with the Land Trust Exchange. This is a national clearing house of land trusts for information, advice, technical data, and so forth. It provides a lot of publications to the general public and the address is: The Land Trust Exchange, 10-17 Duke Street, Alexandria, Virginia, 22314. They have several books on easements, including one entitled The Appraising of Easements. This book is helpful in determining easement values from the points of view of both estate taxes and income tax deductions. They also have an excellent series on conservation tax law. If you are not sure if there is a land trust operating in your area, you can call the Land Trust Exchange and they will give you the address of the closest land trust. Another booklet that the Land Trust Exchange was partially responsible for is called Preserving Family Lands: The Landowner's Introduction to Tax Issues and Other Considerations. Copies of this booklet are available from Powers and Hall Professional Corporation, 100 Franklin Street, Boston, Massachusetts, 02110. It is one of the first books I have ever seen that talks about the use of easements and other tools from an estate tax planning point of view. We think it is terrific because it provides very basic information on how to use some of the tools that land trusts provide. It also explains what some of the estate tax consequences are if you do not do proper planning. I strongly recommend that people who advise farmers, or farmers themselves, get a copy of this booklet.

In conclusion, I would encourage you to look for organizations like the Peconic Land Trust in your own area of the state and develop a collaborative working relationship with them. Use these organizations to your benefit. Use them to help you make your plans for the future and support public programs such as PDR programs that provide you with the options to include in our tool box.

IMPLEMENTATION STRATEGIES
CHARLES WILLE[1]

In the early 1900's, one-third of the United States population was involved in producing food and fiber for its citizens. By 1987, only one out of 40 Americas lived on farms; this represents two percent of the population. Change is occurring.

History tells us that the shift from an agricultural to an industrial society took 100 years. The present shift from an industrial to an informational society took a mere two decades. The pace at which America is moving does not provide us enough time to react. Therefore, we must anticipate the future and the changes that will inevitably occur. This conference is the first step in doing just that.

Yet, we must be cognizant that in developing a future land use policy for New York State, we are creating a shaky compromise between what is perceived to be the public good and the constitutional rights of landowners. As we look to the future we must carefully evaluate our motives and not confuse the issues. As farmers, we do not have a pension fund; our pension is in the land. We do not want to create a policy that chains farmers to the land by police powers. We need to be compensated through the process. We also must answer some difficult questions when developing a policy. Are we saving green space or farmland? Are we trying to preserve farmland or preserve agriculture? We must always remember that any effort to protect farmland is useless unless we have an economic environment that encourages farmers to earn a day's pay for a day's work.

Agriculture is the economic, societal, and cultural base of the United States. The impact of the drought has brought this fact to everyone's attention. I am proud of my deep roots in agriculture, and I am proud to be a part of Farm Bureau. I am involved in many discussions surrounding major challenges to agriculture. Yet, as I review all the work that I have done, I have to regard my role in the enactment of the Agricultural Districts Law and serving on the Governor's Task Force that reviewed this law as my most significant accomplishments. By establishing a system that taxes land on its agricultural value and recognizes that normal farming activities can occur in agricultural districts this law has returned more dollar for dollar benefits than any other New York State program. It enhances agriculture and saves farmland. Farm Bureau's leadership in developing forward thinking solutions to problems is widely accepted. I know that after today's conference our membership is going to be challenged and tested to find the right kind of farmland preservation program for New York State.

As society has removed itself from its agrarian background, I recognize that we must form horizontal linkages with other people who are in a position to create policy. That is why I am pleased with the leadership and diversity of this audience. Now I challenge you. Think about the information you heard today. Read the resource information, the handouts and proposals, and go back to your regions and talk to people about the needs of your area. What kind of a farmland preservation program do we need and want? Let our solutions for today not be tomorrow's problems!

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[1]Mr. Wille is President of the New York Farm Bureau.

Talk to your county Farm Bureau people who will be formulating our state policies on the issues. Become active and involved in the political process. Together we will weave a tapestry that will meet our unique needs.

APPENDIXES

DISAPPEARING FARMLAND CONFERENCE

QUESTIONNAIRE

I. The Loss of Farmland

1-1 Is the conversion of farmland to non-agricultural use occurring at an escalating rate in your county?

yes no

Have you seen any annual loss estimates? yes no

If yes, indicate the number of acres converted. _____

1-2 Who do you believe is concerned over the conversion? Please list (i.e. farmers, educators, county planners)

1-3 What are the reasons for their concern?

II. Agriculture Districts

2-1 Are the basic elements of the Agriculture Districts program widely understood by local residents in your county?

yes no

2-2 Do farmers have a good understanding of the benefits they receive from participation in agriculture districts?

yes no

2-3 Starting in 1991 county governments will review their agriculture districts before the districts can be renewed. Do you believe there is sufficient support to renew the districts in your county?

yes maybe
no
don't know

2-4 What do you see as the Agriculture Districts Program's strengths and weaknesses?

2-5 Under the agriculture assessment program farmland is assessed at its agricultural use value rather than the prevailing market value. Town governments and school districts are losing revenue in the form of taxes because of this assessment. Who should make up the amount of lost revenue?

Local taxpayers _____
New York State _____
Combination of above _____

2-6 Please list your ideas for an education campaign to increase support for agriculture districts.

III. Purchase of Development Rights (PDR) -- State and local governments may purchase the development rights of farmland by paying the owner the difference between the market value and farm-use value of the land. This is a voluntary program for land owners and all other property rights are retained.

3-1 Should New York State adopt a PDR program? yes no

3-2 How should the funds to establish a PDR program be raised?

a. state bond act submitted to voters
b. state enabling legislation to provide that local governments may enact a real estate transfer tax
c. combination of methods a and b
d. other, please describe
e. don't know

3-3 Should the following prerequisites apply before determining eligibility to receive PDR fund?

	yes	no	not sure
a. a county agricultural land use policy aimed at protecting farmland			
b. a critical mass of at least 1,000 acres that clearly identifies viable farms and farmlands			

c. a town exclusive ag zoning ordinance

d. an agreement stipulating that the land will be farmed in accordance with specific soil and water conservation practices

3-4 We know that if this state was to enact a PDR program a huge educational campaign would need to take place. What points do you feel must be part of that campaign?

a. Who are our allies?

b. Who are our opponents?

c. Would you work as part of the education campaign?

yes no

3-5 Some people believe we should consider a lease of development rights rather than an outright sale? This concept would initially cost less money to implement, but the lease would only last a certain number of years. Do you believe this is an appealing alternative to the outright sale of development rights?

yes no

don't know

IV. <u>Exclusive Agricultural Zoning</u> -- Restricts land use to only agriculture within a zone.

4-1 Should New York State enact enabling legislation permitting towns to enact exclusive agricultural zoning?

yes no

don't know

4-2 What amount of compensation should a farmer receive if his land is zoned for agriculture use only?

4-3 Would you like more information on this concept?

yes no

V. Transfer of Development Rights (TDR) - Local jurisdictions designate "receiving" and "sending" areas. Developers in receiving areas can increase density of development by purchasing development rights from farmers whose property is located in the sending area. All transactions are handled privately.

5-1 Do you believe that New York State should encourage the use of TDR programs?

yes no

don't know

VI. Your comments on the Disappearing Farmland Conference

VII. For Farmers Only

7-1a. How beneficial is the Agriculture Districts Program to your farming operation?

Extremely beneficial _____ Beneficial _____ Not beneficial _____

b. How can the law be strengthened to be more beneficial?

c. Are you presently receiving an agricultural assessment on your farmland?

yes no

If yes, how many acres are involved?

7-2 How concerned are you about losing your property rights through regulation or eminent domain proceedings?

Very concerned _____ Concerned _____ Not concerned _____

7-3 Would you consider selling your development rights?

yes _____ no _____ don't know _____

Would you consider leasing your development rights?

yes _____ no _____ don't know _____

7-4 Do you plan to stay in farming for the next 10 years?

yes no

What are the reasons for this decision? (list)

Participant Profile

You are (circle one) educator agent farmer local government

state government media

Please fill out the following and return to Christine Braley at
New York Farm Bureau, Route 9W, Box 992, Glenmont, New York, 12077

TOWN _____
COUNTY _____
NAME (optional) _____
ADDRESS _____

QUESTIONNAIRE RESULTS
FARMLAND PRESERVATION CONFERENCE

Following the Farmland Preservation Conference, a questionnaire was developed and mailed to conference participants, county planners, and Farm Bureau County Presidents. Forty-eight responses were received. This equaled a response rate of slightly over 16 percent, however, not all of the questions were answered by every respondent.

The following key ranks the percentage of responses to each question.
W - Less than 8 percent of the responses
X - More than 8 percent of the responses
Y - More than 15 percent of the responses
Z - More than 30 percent of the responses

I. The Loss of Farmland

1-1 96 percent of the respondents reported a steady or escalating conversion of farmland in their counties. The amount of land being converted is generally unknown.

1-2 Virtually every respondent mentioned farmers and county planners as people who are concerned about farmland conversion. Also mentioned were town planning boards, land conservancy organizations, certain citizens' groups, school administrators, agribusinesses, and County Extension agents. However, there was some disagreement as to how much concern the public has for saving agricultural land; 25 percent of the respondents felt farmers were alone in their concern.

1-3 Reasons for concern about farmland conversion were:

X -
- Conversion brings increased pressure on remaining agriculture;
- Urban dwellers and farmers do not mix;
- Economic vitality is being eroded and agricultural employment opportunities are being lost;
- The critical mass necessary for support services is being dissipated;
- Increased taxes due to increased demands of converted land. The rapid conversion is not allowing enough time to assure the best development of infrastructure and other services; and
- A decrease in the quality of the environment and in water quality and an uneasiness about absentee landowners renting land to farmers.

Y -
- Less access to fresh fruits and vegetables.

2-1 Less than 1/2 of the respondents felt county residents understand the basic elements of the agriculture districts program.

2-2 80 percent of the respondents, both farmers and non-farmers, believed that farmers have a good understanding of the benefits they receive from enrolling their land in an ag district.

2-3 92 percent of the respondents believed that there is sufficient support for agricultural districts to be renewed by the County Board of Supervisors. However, the tax shift caused by the program is seen as a major concern. Many respondents thought that the districts would be smaller.

2-4 The following responses identify the strengths and weaknesses of the ag districts program:

Strengths:

Y - • Controls nuisance complaints; allows normal agriculture activities to occur;
- • Canvassing neighbors builds support for the districts;
- • A psychological benefit of feeling land has agricultural district status;
- • By giving land an agriculture designation, people perceive the area as agricultural in nature;
- • Right to farm laws;
- • Voluntary participation;
- • A farmer (landowner) has freedom of choice for decisions concerning his land;
- • Less development in ag districts; and
- • Protection from special taxing districts.

Z - • Modest tax relief for farmers.

Weaknesses:

W - • Ag districts not used as tools in town and county master plans;
- • Delays, but does not prevent development of farmland; and
- • Because participation is voluntary it lacks the teeth of a mandated program.

X - • Shift of tax burden to land and buildings;
- • Does not offer additional protection to keep Class I, II, and III soils in farmland;
- • Needs to be more beneficial for farmers to enroll;
- • Not enough public education on the significance of agricultural districts; and
- • Decision makers are unaware of the program.

Y - • The program is too short ranged and temporary in nature;
- • Prevents leasing of a small amount of land to a farmer because of gross income eligibility requirements;
- • Fails to offer ways to develop some farmland;
- • No penalty conversion if the farmer has not received an ag assessment; and
- • Does not treat all farmers fairly. If a town has not been reassessed, some farmers will not request an ag assessment, therefore they are free to convert without paying a penalty.

Z - • No power over public utilities, land use planning, government polices, or economic forces;
- • Penalties for conversion are not significant when conversion pressure occurs; and
- • Loss of tax base to local governments.

2-5 Presently, the proportion of taxes paid by a town to the county and school districts is based on the total assessed value of property in the town. When asked who should pay the difference between the ag value and the fair market value, the responses were:

	Response
Local taxpayers	9%
New York State	38%
Combination of local taxpayers and New York State taxpayers	53%
No response	4 people

2-6 Ideas for an education program to increase awareness and support of agricultural districts included:

- Tours of farmland and ag districts for state and local officials;
- Examples of successfully resolved rural/urban conflicts;
- Use of a video presentation on the value of agricultural land to communities;
- Educate farmers within districts on land use plans;
- County real property tax offices should provide handouts on costs/benefits of the program;
- Stories from successful districts operating on the urban fringe;
- Recognize outstanding ag districts with programs similar to the Dairy of Distinction Program;
- Update information for participants so they can sell the program;
- Provide funding to Soil and Water Conservation Districts to educate the public of the benefits of agriculture;
- hire a professional public relations firm to do the work;
- Focus on the future needs of the country for food;
- Display exhibits at shopping malls that emphasize the positive aspects of farming.
- There was strong support for a multi-media campaign that lets people know the value of protecting agriculture. One respondent suggested it be named "You Can't Farm on Rooftops."

3-1 Below are the responses to whether New York State should adopt a PDR Program:

	Response
Yes	92%
Maybe	4%
No	4%

85% of the farmers responded yes and 7% were not sure.

3-2 As to how the funds to establish a PDR Program should be raised:

	Response
State Bond	8%
Real estate transfer tax	8%
Combination of state bond and real estate transfer tax	50%
Others: lottery, direct appropriation	4%
Do not know	30%

3-3 The prerequisites that should apply before receiving PDR funding are (in percentages):

		YES	NO	NOT SURE
a.	a county agricultural land use policy aimed at protecting farmland	80	12	8
b.	a critical mass of at least 1,000 acres that clearly identifies viable farms and farmlands	33	20	47
c.	a town exclusive ag zoning ordinance	33	42	25

	YES	NO	NOT SURE
d. an agreement stipulating that the land will be farmed in accordance with specific soil and water conservation practices	70	15	15

3-4 Respondents suggested the following components to a PDR educational campaign:

- Economic value of agriculture to the economy;
- Need to preserve the best farmland;
- America will never outgrow her need for food;
- Advantage of producing food locally; and
- Voluntary nature of the program.

a. Allies of the PDR educational campaign:

X - • Agribusiness organizations;
- Cooperative Extension;
- Conservationists; and
- People oriented to open space.

Y - • Environmentalists;
- Farmers; and
- Town and County Planners.

b. Enemies of the PDR educational campaign:

X - • Realtors.

Y - • Land investors; and
- Tax leagues/taxpayers who do not understand agriculture's value.

Z - • Developers;
- Some planners; and
- Farmers who either do not believe they will benefit, or are fiscally conservative about the government's involvement in agriculture.

c. 85 percent of the respondents indicated that they would work on an educational campaign on PDR's.

3-5 The following were the responses on whether to have a lease of development rights program:

	Response
Yes	50%
No	30%
Not sure	20%

People volunteered the following comments concerning the lease of development rights:

- It could allow a farmer to escape paying taxes while waiting for a developer to come along;
- A lease would be very temporary; and
- A renewal system must be built in to the lease.

4-1 Below are the opinions on whether or not New York State should enact enabling legislation permitting towns to have exclusive agricultural zoning:

	Response
Yes	40%
No	30%
Do not know	30%

4-2 Over 50 percent of the respondents believed a farmer should receive the fair market value or the difference between the ag value and the development value for his land if it is zoned for agricultural use only.

Other suggestions on how to compensate a farmer if his land is zoned for agriculture use only included:

- Establish a trust fund for future generations to use;
- Minimal amount of compensation;
- None needed if farming is profitable;
- Create a zoning designation, but have a five year roll back plan instead of compensation;
- A system of incentives and/or obligations; and
- 33 percent of the respondents did not believe it is necessary to provide reimbursement.

4-3 80 percent of the respondents wanted more information on ag use zoning.

5-1 Below are the responses to whether New York State should encourage the use of TDR Programs:

	Response
Yes	52%
No	20%
Do not know	28%

VI. Evaluations of the conference were 99 percent favorable.

People were generally pleased with the quality of speakers and the presentations. They enjoyed an opportunity to explore the issues, but recognized there are no easy answers. We were reminded again of a theme that was expressed by many speakers: enactment of a farmland preservation program will not make agriculture profitable. It is a tool that can be used to increase the economic viability of the agricultural unit.

VII. Answers from farmers only:

7-1 a. Following are the responses as to whether the Agriculture Districts Program is beneficial:

	Response
Extremely beneficial	30%
Beneficial	50%
Not beneficial	20%

b. The respondents believed the law could be strengthened by:
- Reducing the paperwork;
- Having it apply to true farmers only;
- Making state agencies more aware of the program;
- Providing more incentives for protecting Class I and II soil types; and
- A part-time farmer felt that the benefits were invisible, and because so few farmers utilize the tax aspect, it is not widely useful.

c. 80 percent of the full-time farmers who responded were receiving an agricultural assessment, however, the assessment was not being received on some of their rented land, driving up the cost of using that land.

7-2 Below are the responses that indicate how concerned farmers are about losing their property rights through regulation or eminent domain proceedings:

	Response
Very concerned	55%
Concerned	30%
Not concerned	15%

7-3 Responses as to whether farmers would consider selling their development rights were:

	Response
Yes	60%
No	20%
Do not know	20%

Responses as to whether they would consider leasing their development rights were:

	Response
Yes	55%
No	15%
Do not know	30%

7-4 75 percent of the respondents plan to stay in farming for the next 10 years. The reasons farmers plan to stay in farming include:
- Like farming as an occupation;
- It is in their blood;
- Farmers can be successful;
- Hope to build enough equity to make it a full-time operation;
- Use the sale of the farm for retirement income;
- Neighboring farmers are committed to keeping agriculture alive; and
- Belief in the fact the agricultural economy will improve.

Those who said they were not going to continue farming cited the following reasons:
- Age;
- Lack of good help;
- Health concerns; and
- Poor return on investment.

FARMLAND PRESERVATION IN CONNECTICUT[1]

Connecticut has suffered the loss of an enormous amount of farmland in the last 100 years, so that today, Connecticut must bring in nearly 80 percent of its food from out of state.

To sop this trend, Connecticut enacted a Purchase of Development Rights program in 1978. The goals of the Connecticut PDR program are as follows:

1. Retain the best and most productive agricultural land;
2. Provide an opportunity for farmers to purchase farmland at affordable prices;
3. Help farmland owners overcome estate planning problems which often result in farmland loss;
4. Provide working capital to enable farm operators to become more financially stable; and
5. Address other personal ownership problems such as age and health, which contribute to the likelihood of the land being converted to non-agricultural use.

As of May 24, 1988, Connecticut had purchased the development rights to 89 farms which are made up of 14,687 total acres. The cost of the program to date is $28,149,379.

The process begins when a landowner files an application with the Connecticut Department of Agriculture. Included in the application are:

1. Statements verifying the probability of conversion of the land;
2. Basic facts describing the land (the number of acres, how the land is used, and a detailed soil report from Soil Conservation Service); and
3. Maps identifying the location, and deed references.

Upon receipt, the state notifies the municipality that the land is under consideration for the PDR program. The farmland is then evaluated by Soil Conservation personnel and County Extension agents according to the following criteria:

1. The probability that the land will be sold for non-agricultural purposes;
2. The current productivity of such land and the likelihood of continued productivity;
3. The suitability of the land as to soil classification and other criteria for agricultural use;
4. The degree to which such acquisition would contribute to the preservation of the agricultural potential of the state;
5. Whether or not there are any encumbrances on such land; and
6. The degree to which such acquisition would mitigate damage due to flooding.

Connecticut has targeted certain zones around the state as priority areas. USDA classified types I, II, and III soils are the most desirable, and to date, 60 percent of all acquired lands have those soil classifications.

The state has established a Farmland Preservation Advisory Committee which determines if the farmland should be protected. If the Committee approves the application, then the farm is appraised for both its agricultural and market value to determine the value of the development rights. At this stage, the landowner and the Commissioner of Agriculture negotiate a price for the development rights. When, and if a price is agreed upon, a request for purchase is made to the state

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[1]Prepared by Tom Cosgrove, New York Farm Bureau, (518) 436-8495.

Properties Review Board for final approval. Funds are then requested from the state Bond Commission to complete the purchase.

The process usually takes 14 to 18 months to complete. During this time the farmer agrees not to sell his/her land.

Funding available for development rights purchases has totalled $44,750,000 through annual bond authorizations and includes $8,000,000 for 1988.

In 1981 the act was amended to permit private gifts of development rights on farmland to the state.

Other Programs

A. In 1987, enabling legislation was passed to allow for locally initiated Transfer of Development Rights Programs. Thus far, no local action has been taken.

B. Farmers may apply for use value assessment for agricultural land each year. This program is carried out on the local level. An assessor for each municipality determines whether the land receives use value assessment based on productivity, gross income, total acreage, acreage used for farming, and the degree to which the land is contiguous. Denial of an application is subject to repeal.

Connecticut passed a Right to Farm Law in 1981 which states that no accepted farming practice can be considered a nuisance provided the farm has been in operation for at least a year.

Selected References

The State Purchase of Development Rights Program, State of Connecticut, Department of Agriculture.

"Summary of Purchase of Development Rights," State of Connecticut, Department of Agriculture.

Farmland Preservation Planning Report FY 1988-89, State of Connecticut, Department of Agriculture.

Farmland Notes, NASDA Research Foundation Farmland Project, January 1988.

FARMLAND PRESERVATION IN FLORIDA[1]

Right-to-Farm

This legislation was passed in 1974 and amended in 1982. Its original content was briefly stated and was similar to that of other states' laws. The amendments expanded the legislation to include specific findings, definitions, and cases where farm operations could be considered nuisances.

Farm Machinery and Livestock Taxation

Farm machinery is appraised at 85 percent of purchase price and depreciated for five years down to a floor of 30 percent. Livestock taxation was exempted in 1982.

Ownership Restriction, Agricultural Land

As of September 1981, alien corporations acquiring real property in Florida must, beforehand, have a registered office and agent in the state; further, the corporation must file identifying information with the Department of State each year.

Use Value Assessment

This legislation, called the "Greenbelt Law," was adopted in 1975. It provides for assessments of land at its agricultural use value, providing the land has been correctly classified as being used primarily for bona fide agricultural purposes.

Local Efforts

Two counties in the state, Dade and Palm Beach, have enabling legislation for Transfer of Development Rights (TDR) Programs. There are currently no such programs in operation in either county.

Mapping and Monitoring of Agricultural Lands Program (MMALP)

In 1984, the state legislature directed the Department of Community Affairs (DCA) to map state lands. Using satellite data, first a classification system was devised and applied to land covers; the data from the years 1974 and 1984 was analyzed to determine farmland loss in the interim. A complete study giving breakdowns by counties and by land covers for the years 1974 and 1984 was the result of this three-year effort. Procedures and methods established in this study will be used in the future to continue monitoring land use changes in Florida.

State Comprehensive Plan and Local Government Comprehensive Plan

The state, using an idea first put into practice in Oregon, mandated comprehensive planning programs for all municipalities and counties in the state. Essentially, the municipalities and counties are supposed to set out a plan for "future development and growth" that deals with a number of elements. The areas to be considered include mass transit, housing, conservation, and capital requirements, as well as future land use. Working within very broad parameters, municipalities and counties are left to themselves to go ahead and determine ways

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[1]Prepared by Ann Burroughs, New York State Assembly, (607) 336-7160.

and means. These plans are currently in the works; how agricultural lands will be effected by this scheme remains to be seen.

Contacts

Ms. Becky Everhart, Staff Director, Florida House Agriculture Committee

Mr. Robert Groce, Soil Conservationist, SCS/Department of Community Affairs, Florida

Mr. Paul F. Noll, Community Program Administrator, Department of Community Affairs, Florida

Ms. Barbara Brumback, Florida Atlantic University/Florida International University

Dr. Rodney Clouser, Institute of Food and Agricultural Sciences, University of Florida

Dr. Roy Carriker, Institute of Food and Agricultural Sciences, University of Florida

References

"Farms in Our Future? Growth Management and Farmland Protection Initiatives," Florida Atlantic University/Florida International University (FAU/FIU), Joint Center for Environmental and Urban Problems, December 1985.

"Agricultural Land and Related Issues in Florida: An Update," Dr. Rodney Clouser, February 1985.

"Local Government Comprehensive Planning and Land Development Regulation Act," as amended by SB978-1986 Legislative Session.

Mapping and Monitoring Assembly: Policy Statement, September 1987.

Natural and Environmental Resources - Land Use Handbook, American Farm Bureau Federation, January 1983.

FARMLAND PRESERVATION IN MASSACHUSETTS[1]

Massachusetts is a state that has rapidly undergone farmland conversion in the last two decades. The state has several programs in place to preserve farmland.

The main device is a Purchase of Development Rights program called the Agricultural Preservation Restriction (APR) program. Massachusetts enacted the program in 1977 and made its first acquisition in 1980. Since then, Massachusetts has purchased the development rights to 227 farms, encompassing 20,684 acres of farmland. These acquisitions have cost the state $43,076,000.

Owners of prime agricultural and horticultural lands are encouraged to send applications to the Conservation Commission of their municipality and the state Commissioner of Food and Agriculture.

The application includes a topographical map, a USDA soil survey and statements describing the types of agriculture practiced, and the reasons the land might not remain in agriculture.

The landowner must include an offering price with the application that is sent to the state Commissioner's office. After the municipality makes its recommendation, the state Commissioner reviews the application and has the land appraised for both agricultural and market value. The three main criteria for selection are:

1) the land's suitability and productivity for agricultural use;
2) the degree to which continuation of agriculture on the land is threatened; and
3) the likelihood that, if saved, the land could sustain viable agriculture.

Approval of the land also depends on the price of the development rights and the availability of funding.

The state Commissioner's office makes its recommendation to the State Agricultural Lands Committee which has the final say on the landowner's application. If the Committee accepts the farmer's offer, the farmer has the option of receiving payment in a lump sum or over two years. This payment is subject to capital gains taxation.

Approval of the APR does not exempt the farmer from local zoning ordinances, building codes, or compliance with health and safety regulations. The landowner may not make any changes to the land that would detract from the agricultural use of the land under the APR. The farmer may apply for a release from the APR. If granted, the farmer must pay the state the current value of the land's development rights.

Funding for APR purchases comes from two sources. The first source is state issued bonds. In 1988, the program is received $35 million through a $500 million Open Space Bond acquisition. In total the program has been appropriated $80 million. The second source of funding comes from municipalities. When the Conservation Commissioner submits his recommendation on the land, he may also volunteer to fund a portion of the APR. If the municipality funds a portion of the APR, it becomes a co-holder of the development rights on that land. The suggested contribution level is five to 25 percent by a municipality and is usually necessary in areas with high land values. In this case, the municipality

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[1]Prepared by Tom Cosgrove, New York Farm Bureau, (518) 436-8495.

would have to approve the release of an APR on a parcel as co-holder of the development rights.

Massachusetts has an option of use-value property tax assessments (Farmland Assessment Act) as another method of preserving farmland. Lands under an APR are eligible for use-value assessment as long as the land is in agricultural use. The minimum requirements for this assessment are five contiguous acres of agricultural land that have produced $500 annually and have been in agricultural use the previous two years. These are also the minimum requirements needed to be eligible for the APR program. All farmers must apply for use-value assessment each year.

Selected References

Notes on Chapter 61A "Farmland Assessment Act," Massachusetts Farm Bureau.

Instructions and Application Package for the Agricultural Preservation Act, Department of Food and Agriculture, Commonwealth of Massachusetts.

Farmland Notes, NASDA Research Foundation Farmland Project, January 1988.

Agricultural Preservation Restriction Program - Questions and Answers, Department of Food and Agriculture, Commonwealth of Massachusetts.

FARMLAND RETENTION PROGRAMS IN NEW JERSEY[1]

New Jersey has instituted several programs in an attempt to protect some of its most productive farmland from increasing development pressures. The framework of New Jersey's current program includes:

- Farmland Assessment
- Agriculture Retention and Development
- Farmland Preservation
- Right To Farm

Farmland Assessment

Land engaged in agricultural or horticultural use may be taxed based on its use value rather than its current market value. To be eligible for this preferential tax assessment, the land must have been in agricultural/horticultural use for at least two years prior to the assessment application, must be at least five acres in size, and must generate average farm sales of at least $500 on the first five acres and $5.00 per acre on each additional acre.

A State Farmland Evaluation Advisory Committee makes annual recommendations of fair land values to the county assessors who are responsible for making the appropriate land assessments. If land under the preferential tax assessment program is converted to an ineligible use, rollback taxes will be assessed on the current year, plus the two preceding tax years.

Agriculture Retention and Development and Farmland Preservation

In 1981 New Jersey voters passed a $50 million bond issue to acquire farmland easements and fund soil and water conservation programs. In 1983, further legislation was passed which established County Agriculture Development Boards (CADB) and the State Agriculture Development Committee (SADC). The CADB's are responsible for identifying Agricultural Development Areas (ADA) where agriculture is the preferred land use, establishing standards for preservation programs, and approving applications for financial assistance. The State Agriculture Development Committee, chaired by the State Secretary of Agriculture, works closely with the county boards and administers the Farmland Preservation Program.

Once the CADB designates the agricultural development area, farmers in the agricultural area may voluntarily enroll their land in the eight-year farmland preservation program. Landowners receive no money for this land commitment. They are, however, eligible for benefits such as cost-sharing on soil and water conservation projects, right-to-farm protection, protection from eminent domain takings, and they may sell the development rights on their land.

The value of a land's development rights is determined by three appraisals, two local and one state, to determine a fair market value which the landowner may either accept or reject. The county and state share development rights purchase costs, which the state can fund up to 80 percent of the total cost. Currently 16 of New Jersey's 21 counties have County Agricultural Development Boards. As of June 1988, 24,467 acres (212 farms) were enrolled in the eight-year program, development rights had been purchased on 1,776 acres (17 farms), another 13,342

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[1]Prepared by Laurie Keene, New York State Legislative Commission on Dairy Industry Development, (518) 455-2983.

acres were being reviewed for acceptance, and approximately $10 million of the $50 million bond fund had been spent to preserve and retain prime agricultural land in the Garden State.

Right To Farm

New Jersey passed a Right To Farm Act in 1983 to promote the continuation of agriculture in the Garden State and protect farmers against local regulations and private nuisance suits that contradict normal farming practices.

Sources:

Zabel, Deborah, Communications Coordinator, New Jersey State Agriculture Development Committee, New Jersey Department of Agriculture, CN 300, Trenton, New Jersey, 08625.

Klein, Susan B., "Agricultural Land Preservation - A Review of State Programs and Their Natural Resource Data Requirements," Conference of State Legislatures, 1982.

Farm Forum feature article, "Farmland Preservation: An Overview," New Jersey Conservation Foundation.

New Jersey Statutes Annotated.

MANDATORY STATEWIDE FARMLAND USE PLANNING AND ZONING: THE OREGON APPROACH[1]

The State of Oregon has what is considered by many to be the nation's most comprehensive land use program. Oregon's program is centeed around the Oregon Land Use Planning Act of 1973, commonly referred to as Senate Bill 100. Unlike many states where farmland protection often appears to be an afterthought, protection of agricultural land was the driving force behind the Oregon Act. Similar to other farmland protection programs, Oregon's program relies on local zoning ordinances as the primary tool for preventing urban development of agricultural land. However, whereas agricultural zoning is often the only measure in other states applied at local option, in Oregon, the local zoning ordinance is but one element in an integrated set of statutorily required programs and policies.

Structure of the Act

Oregon's Land Use Planning Act of 1973 provided for land use planning to take place at the local level, but within a framework set by the state. The act required all of Oregon's 242 cities and 36 counties to adopt comprehensive land-use regulations. It specified planning concerns that had to be addressed, set statewide standards which local plans and ordinances had to meet, and established a review process to ensure that those standards were met. The body charged with establishing the statewide framework and overseeing its implementation was the Land Conservation and Development Commission (LCDC). LCDC was charged with three principal tasks:

1. Formulation of statewide planning goals and guidelines to govern local land use decisions.
2. Reviewing the individual plans and approving their compliance with the statewide goals. Once approved, LCDC's control over local planning diminishes. The Commission can become involved in local planning proceedings to amend a plan or regulation if necessary. Individual land-use decisions, however, may be appealed to the Land Use Board of Appeals (LUBA), a kind of land-use court created in 1979. LCDC's remaining power lies in its mandatory formal review of local plans, conducted every three to five years, and in its power to order revisions at that time.
3. LCDC has the authority to enforce state land-use goals while county plans are being prepared for approval, extending to even limiting development for an entire county, city, or other designated area while local plans are being promulgated.

Critics of Oregon's program contend that the state has taken over local land-use planning. However, according to LCDC publications:

- The State of Oregon does not write or adopt comprehensive plans; cities and counties do;
- There is not a "state land-use plan," rather there is an amalgamation of 278 local plans that covers the entire state;

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[1]Prepared by Peter Fredericks, New York State Legislative Commission on Rural Resources, (518) 455-2544.

- The state does not administer planning permits, rather cities and counties issue permits for variances, subdivisions, land partitions, etc.; and
- The state does not zone land, local governments do that.

Agricultural Land Protection Within the Land-Use Planning Act

Oregon's provisions for planning and protecting farmland stem from four main sources within the Land-Use Planning Act.

1. Containment of Urbanization - The state Land-Use Statute and regulations require cities to adopt urban growth boundaries (UGB's) which define the outer limits of their planned growth. UGB's include land already in urban use plus enough land to accommodate growth through the year 2000. The boundaries protect farmers by limiting sprawl that often consumes farmland. The boundaries keep farmers from having to compete with developers and from paying higher prices for farmland. The urban growth measure also stipulates that cities and counties must consider farmland protection in deciding the location of urban growth boundaries and in planning the expansion of urban services.
2. Statewide definition of Agricultural Lands - The state Land Use Statute and Regulations defines agricultural lands with a precise, objective methodology based on the Soil Conservation Service's soil capability classification system. (Class 1-4 soils equal agricultural lands). Local governments are required to inventory agricultural land adopt policies to preserve such land and with few exceptions, place such agricultural land under "exclusive farm use" (EFU) zoning. (Approximately 17 million acres or one-half of the privately owned land in the state has been designated as EFU). Essentially all land not set aside for future growth, however, must be zoned EFU, and may not be developed except in a manner consistent with the long-term viability of agriculture. The primary protective measures under EFU zoning are limits on the ways in which the land can be used or divided. The development of "nonfarm dwellings" for example, is tightly controlled. Requirements for minimum lot sizes ranging from 10 to 320 acres prevent commercial farmland from being divided into small parcels.
3. Oregon State Law, Chapter 215 - This chapter sets forth the state's standards for EFU zones. It specifies the uses that can be allowed in such zones and contains "right-to-farm" laws. It discourages the development of "hobby farms" and encourages the preservation of holdings large enough to support commercial farms.
4. Oregon State Law, Chapter 308 - This chapter contains provisions for farm tax deferral. Land zoned EFU is entitled automatically to ag use-value assessment rather than at higher values based on development potential. The lower taxes are designed to encourage landowners to continue farming and not to subdivide or develop farmland.

Concluding Comments

The Oregon program is not without its critics. Some feel that an excessive burden is placed upon localities in administering the program. In addition, local officials have sometimes sidestepped the act to allow the development of farmland despite the detrimental long-term effects on agriculture. This is done in response to development pressures by non-agricultural interests.

Overall, studies assessing the impact of the Oregon Land Use Planning measure indicate that the program has effectively stopped large-scale urban sprawl. Spot development around urban fringe areas, however, does continue. In addition, LCDC has estimated that the entire cost of this program to the state over the past 10 years is in the neighborhood of $50 million. This is substantially less than the

cost some states have incurred utilizing purchase of development rights programs to preserve a few thousand acres of farmland.

When questioning LCDC officials about the reception Oregon's land use programs have had among the state's agricultural community, the answer was overall very positive. In general, larger more commercial operators tend to favor the program more than smaller part-time operators, but as a whole the agricultural community was very active in pushing for the initial land-use mechanisms and continues to be supportive. Over the programs' 15-year life it has been subject to four repeal attempts. The last attempt, in 1982, was in the midst of a severe recession that some blamed on the land use law. Voters however, rejected the repeal by 55 to 45 percent.

In sum, Oregon's Land Use Planning Act had helped create a sense of certainty which should have a stabilizing effect on the agricultural community over the long term.

Selected References

Steiner, Frederick R. and Theilacker, John E., "Protecting Farmlands," AVI Publishing, 1984.

Klein, Susan B., "Agricultural Land Preservation - A Review of State Programs and Their Natural Resource Data Requirements," Conference of State Legislatures, 1982.

Hiemstra, Hal., "Oregon's Statewide Farmland Planning and Zoning Approach." Council of State Governments, 1983.

"Oregon's Statewide Planning Program," A summary prepared by the Oregon Land Conservation and Development Commission, 1986.

"National Agricultural Lands Study - The Protection of Farmland," 1981.

Duncan, Myrl L., "Agriculture as a Resource: Statewide Land Use Programs for the Preservation of Farmland," University of California - Berkley, 1987.

Ward, Justin R., "Taxing the Rural Landscape: Improving State and Federal Policies for Prime Farmland," Natural Resources Defense Council, 1988.

PENNSYLVANIA'S FARMLAND PRESERVATION PROGRAMS[1]

Pennsylvania relies on a variety of programs to help preserve and retain its prime farmland. These programs are outlined and explained below.

Preferential Property Tax Asessment

Under Pennsylvania's Farmland and Forest Land Assessment Act of 1974, more commonly known as the "Clean and Green Act," any land devoted to agricultural use, agricultural reserve and/or forest reserve use is assessed on its present use value rather than the current market value. To qualify for this use value assessment, the land presently devoted to agriculture must have been agriculturally productive for the previous three years, and be either a minimum of ten contiguous acres or have an anticipated gross annual income of $2,000.

If the land is taken out of the program it is subject to rollback taxes for up to seven years, plus 6 percent simple interest. Roll back taxes are not assessed when land is sold if the land remains in the program. In addition, farmland is assessed at its use value for inheritance tax purposes.

The Pennsylvania Department of Agriculture plays an advisory role in this program, but the county assessor is the person responsible for the program's administration.

Agricultural Security Areas

Landowners with a total of at least 500 acres of viable farmland may voluntarily request local government officials to form an Agricultural Security Area (Ag. District). Farms within an agricultural area are protected from local laws and ordinances that interfere with normal farming practices, as long as the public health and safety are not threatened. This is also stated separately in the Right to Farm Act.

Another benefit to landowners under the Agricultural Security Area Program is the option to sell the land's development rights to the county. The program is entirely voluntary for both parties. Only county governments, not local governments, are permitted to purchase and sell development rights which they may hold for 25 year cycles, or forever. The value of the easement rights is the difference between the full market value and the agricultural use value assessment of the land. In November 1987, a $100 million bond referendum was passed in Pennsylvania, making it the seventh state to establish a statewide PDR program. Counties are required to share in the purchase cost and every county that has farmland is eligible for funds. Through this referendum a 13-member state "Agricultural Conservation Board," chaired by the Secretary of Agriculture, was created to administer a statewide program to purchase agricultural conservation easements.

The agricultural area designation is reviewed every seven years. If a landowner does not initially join a neighboring Agricultural Security Area, and then later decides to join, he may do so only seven years after the agricultural area's initial creation by notifying the local government body at least 120 days before the end of any seven year period.

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[1]Prepared by Laurie Keene, New York State Legislative Commission on Dairy Industry Development, (518) 455-2983.

As of January 1988, a total of 249,398 acres (2,046 farms) were enrolled in Pennsylvania's Agricultural Security Area Program.

Sewer and Water Exemptions

Farmers whose land has been in production for at least three years prior to installation are eligible for an exemption from municipal sewer and water line assessments if they do not use the facilities. The Department of Agriculture is responsible for certifying all qualifications.

Condemnation Approval

The state established the Agricultural Lands Condemnation Approval Board which must determine that no reasonable alternatives exist before the Commonwealth of Pennsylvania condemns productive farmland for new highways or waste disposal purposes.

Right To Farm

This law states that no nuisance action can be brought against any agricultural practice that has been in operation for at least a year and is considered to be a normal farming practice.

Additional farmland retention programs in Pennsylvania include: 1) local zoning to protect and preserve natural resources and agricultural land and activities; 2) restrictions on foreign governments from acquiring more than 100 acres of agricultural land in the Commonwealth; 3) prohibiting the Environmental Quality Board from imposing contaminant or air pollution regulations that would restrict normal farming practices; and 4) exemptions for incorporated family farms from the one percent Capital Stock Franchise Tax.

Sources:

Lembeck, Stanford, Community Housing and Planning Specialist, Penn State Cooperative Extension Service, University Park, Pennsylvania, 16802.

"A Legislative Directory for Farmland Retention in Pennsylvania," Pennsylvania Department of Agriculture.

Natural and Environmental Resources - Land Use Handbook, American Farm Bureau Federation, January 1983.

Pennsylvania Statutes Annotated.

FARMLAND PRESERVATION IN VERMONT[1]

This year (1988) the Vermont legislature passed a comprehensive land use planning and growth management bill. The "Act to Develop and Approve Local and Regional Plans which Reflect State Adoptd and Developed Guidelines" includes a section which is aimed at preserving farmland.

Prior to the passage of the Act, referred to as the "Growth Bill," groups throughout the state voiced their dissatisfaction with the laws dealing with land use planning and preservation. Vermont's 1970 Land Use and Development Law, Act 250, had provisions designed to control the effect of development on the environment and empowered the State's Environmental Board to carry out these provisions. The statutes of Act 250, however, proved ineffective in preserving open space, natural areas, and farmland. Many groups feared overdevelopment was ruining Vermont's natural areas which would also hinder Vermont's tourist industry.

In 1987, the Governor's Commission on Vermont's Future held 20 public hearings across the state. The statewide response was that something more had to be done to control development. This Commission's recommendations formed the backbone of the Growth Bill. The Growth Bill strengthened and expanded the 1987 Vermont Law Title X, Chapter 15, which established the Housing and Conservation Trust Fund. The Fund is aimed at preserving a wide range of rural lands including agricultural, historical, and natural lands. The Fund also contributed to rural housing, and Vermont gave $3 million to this Fund through a general appropriation for the first year. Funding, totalling $1,062,000, went toward protecting 2,400 acres of land at four different locations. The land is protected by either deed restrictions or conservation easements held by private land trusts, or development rights held by municipalities.

When the Growth Bill passed this year it set up a more comprehensive land preservation program. The total appropriation is $20 million and includes provisions for a state Purchase of Development Rights Program. In the future, funding for the program will come from a real estate transfer tax on houses valued over $100,000.

Under the Growth Bill, each region of the state will identify important farmland through the Land Evaluation and Site Assessment Program (LESA) developed by the United States Soil Conservation Service. Newly created Regional Planning Commissions will use LESA information to target prime farmland to be saved in accordance with regional and state goals.

The Growth Bill established two other unique programs to aid agriculture. The dairy subsidy and property tax abatement here designed to help preserve Vermont farms.

In 1988, dairy farmers were eligible to receive a subsidy of 50 cents per 100 pounds of milk, up to one million pounds. Then, starting in 1989, a tax abatement program will begin. Farmers who receive over 50 percent of their income from farming would pay property taxes on only their farmhouse and the parcel it is located on. They would pay no property tax on their farmland, buildings, and support lands. The state would compensate towns for lost revenue.

Each year a farmer receives an abatement, he/she must agree to give the state the right of first refusal to purchase the farmland for the next five years. This means the state has the option of matching the price offered by farmers who

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[1]Prepared by Tom Cosgrove, New York Farm Bureau, (518) 436-8495.

are not in the program or anyone who plans to purchase the land and convert it to non-agricultural use.

If within the five year period the farmer decides to sell the land and the state takes the option, then the tax abatements received are treated as credit towards the purchase price. The land would then be held by the Housing and Land Conservation Board who would most likely place a deed restriction severing the development rights on the land and sell it to someone who would maintain the land in agriculture. If the state does not take its option and the farmer sells the land, then he/she must repay the tax abatements received.

Before the Growth Bill, Vermont had a law which allowed agricultural land to be appraised at use-value rather than market value for property tax payments. This option is still available, but not to farmers who enter the tax abatement program. The minimum requirements are: 25 acres actively used for agriculture; parcels smaller than 25 acres are eligible if they are owned by a farmer, have been leased by a farmer for three years, or have produced $2,000 in farm sales for one of the last two or three of the previous five years. A state Current Use Advisory Board sets the guidelines for the use-value assessments each year.

Landowners must apply by February 1st. If accepted, assessors determine agricultural and market values by April 1st. The state has a Use-Tax Reimbursement Fund to repay municipalities for revenue lost because of lower agricultural assessments.

If land that receives use-value assessments is converted to non-agricultural use during the year, then the farmer must pay a penalty of ten percent of the full market value in addition to the annual property tax. The penalty tax goes into the Use-Tax Reimbursement Fund.

To discourage speculation and development of open lands, Vermont taxes the profits from the sale of real estate held for less than six years. The tax is designed to discourage speculation and applies to parcels of farmland and open space greater than ten acres.

Livestock and farm machinery are exempt from taxation and Vermont has a 1981 Right to Farm Law which prohibits any normal farming practice to be considered a nuisance.

Enabling legislation in 1986 allowed for local governments to create a Transfer of Development Rights Program, but no such program has been established.

Sources

Farmland Notes, NASDA Research Foundation Farmland Project, January 1988.

Farmland Notes, NASDA Research Foundation Farmland Project, April 1988.

Quate, Shep, Natural and Environmental Resources - Land Use Handbook, American Farm Bureau Federation, January 1983.

Miller, Paul N., "A Review of Recent Strategies Used for the Preservation of Farmland," New York State Board of Equalization and Assessment, February 1986.

Duncan, Myrl L., "Agriculture as a Resource: Statewide Land Use Programs for the Preservation of Farmland," Ecology Law Quarterly, (Vol. 14:401, 1987).

Purchase of Development Rights; Status of Current State Programs in the Northeast, American Farmland Trust, July 1988.

THE WISCONSIN FARMLAND PRESERVATION PROGRAM - AN OUTLINE[1]

Wisconsin and New York have much in common. Both states have populations of Yankee and ethnic stocks. Each is dominated by a major urban place. Both states are similar in lad area and climate and both are major dairy states. Farmland protection laws have been enacted in each. However, the Wisconsin Farmland Protection Law contains some elements worthy of consideration for adoption in New York.

The Wisconsin Farmland Preservation Law, enacted in 1977, has three primary goals:

- Farmland protection;
- Property tax relief; and
- Soil and water conservation (1985 amendment).

In addition, it has a number of secondary or related goals:

- Management of urban and rural development;
- Minimizing public service costs;
- Minimizing land speculation;
- Preventing farm/nonfarm conflicts;
- Maintaining local farm economies;
- Supporting young farmers; and
- Promoting the family farm concept.

The Wisconsin law is a unique blend of state incentives, individual decisions and local government actions, which has been widely acclaimed by the National Association of State Departments of Agricultures (NASDA) Research Foundation and the American Farmland Trust.

How the Program Works

The state provides incentives in the form of income tax credits and planning grants. Individual farmers and local governments are not required to participate, however, they must meet certain state standards or criteria if they decide to participate.

In urban counties (100 or more population per square mile), exclusive agricultural zoning must be adopted before farmers are eligible for the tax credit.

In rural counties (less than 100 population per square mile), farmers may be eligible for tax credits through a farmland preservation agreement of 10 to 25 years or if their town or county has enacted exclusive agricultural zoning.

In both cases, all participants must comply with soil and water conservation policies and procedures adopted at the county level (in accordance with state guidelines).

Farmland Preservation Plans

The state provides grants for counties to devise these plans which must be based on studies of agriculture, natural resources, population, urban growth, housing, and public facilities. A plan must include a statement on county policy concerning agricultural land preservation, providing for urban growth and protecting the local environment. Maps must be prepared showing farmland preservation area, transition areas, and environmentally significant areas.

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[1]Prepared by Joseph P. Sullivan, Senate Minority Program Office, (518) 455-2944.

Plans are not binding on counties or landowners, but serve as guides for future local decisions, including review of farmland preservation agreements and exclusive agricultural zoning proposals.

Official adoption of a county plan increases the percentage of the maximum tax credit to 100 percent.

As of December 31, 1986, 72 Wisconsin counties have adopted such plans. The state provided $1.8 million in planning grants to counties between 1977 and 1983. These grants have proven to be a strong incentive for counties to develop and adopt the agricultural land use plans and policies.

Exclusive Agricultural Zoning (EAZ)

EAZ is the most common method for implementing farmland preservation plans, provides the broadest protection of farmland and creates the highest percentage of tax credit for participants.

Town or county EAZ must meet minimum state standards and be certified by a State Land Conservation Board.

Permitted uses are limited to agriculture and farm dwellings (minimum lot size 35 acres per dwelling). Certain conditional uses or special exceptions may be permitted.

Rezoning is permitted, only after a public hearing and local findings that the land in question is suitable for development and that provision of needed public services or facilities will not be a burden to the local government.

EAZ is required in the 18 Wisconsin counties which are classified as urban.

As of December 31, 1986, certified Exclusive Agricultural Zoning was in place in 342 towns and 24 incorporated municipalities in all or part of 40 counties. About 30,000 farms and six million acres of land is encompassed.

About 75 percent of the towns in the 18 urban counties have adopted certified EAZ through county or town ordinances.

Exclusive Agricultural Zoning is concentrated in the Southern one-third and West-Central part of Wisconsin coinciding with the most productive soils and urban development.

Farmland Preservation Agreements (FPA)

FPA are an alternative to EAZ in rural counties. FPA are restrictive covenants that limit land use to agriculture and require soil and water conservation practices for periods ranging from 10 to 25 years.

To be eligible, the applicant must be a Wisconsin resident, the parcel must be 35 acres or more, and gross farm receipts must have been at least $6,000 in the past year to $18,000 in the past three years. In addition, the land must have been actively farmed for at least 12 consecutive months in the past three year period.

As of December 31, 1986 about 5,800 FPA covering 1.35 million acres of land were in effect.

In general, persons signing agreements have larger farms, more cropland, greater plans for investment, higher farm income, and children interested in farming than those not signing agreements.

The Tax Credit

The tax credit received is based on a complex formula which includes land taxes, household income of the landowner and contract, zoning, and planning provisions which cover the land.

If the land is covered by both zoning and a county plan, the landowner is eligible for 100 percent of the maximum income tax credit ($4,200 annually). If the land is covered by a plan and an individual contract the landowner is eligible for 70 percent of the maximum tax credit.

The tax credit is targeted to mid-sized family farms which have little off-farm income. The maximum allowable income is $36,700. The percentage of property taxes increases as income decreases. Thus, the tax credit is attractive and helpful to young farmers.

Paybacks, or Penalties for Withdrawal

If farmland is removed from an exclusive agricultural zone or if a preservation agreement expires and is not renewed, tax credits received over the past 10 years must be repaid (at six percent interest, compounded). If the full amount is repaid immediately there is no interest. Otherwise, a lien is placed on the property until the payback and interest are fully satisfied.

Compliance With Soil and Water Conservation Performance Standards, Adopted by Counties Subject to Guidelines and Approval of the Land Conservation Board (LCB)

These new requirements are very similar to the conservation requirements applicable to federal farm programs under the 1985 Food Security Act.

The LCB issues guidelines and approvals of county soil and water conservation standards and procedures which are developed and enforced by county land conservation committees. County standards and procedures may exceed the minimum standards set in state guidelines.

County Land Conservation Committees (CLCC) must follow specific guidelines during the process of adopting county soil and water conservation standards. These guidelines include: informational meetings, notices, public hearings, and direct mail notification of all farmers. Written standards and procedures are sent to all participants and landowners must annually certify (in writing) that they are in compliance with the standards. County Land Conservation Committees perform field investigations to monitor compliance.

Landowners who fail to comply with standards are issued a notice of non-compliance. Copies of which are sent to local zoning bodies, the Wisconsin Department of Revenue and the State Agriculture Department. No farmland preservation tax credits will be allowed to landowners who have been issued non-compliance notices, unless such notice is subsequently cancelled by the County Land Conservation Committee.

NOTE: The above outline is based on a field visit and information provided by the Wisconsin State Senate and Wisconsin Department of Agriculture Trade and Consumer Protection, Madison, Wisconsin, November 1987.

For more detailed information contact:

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